United States Court of Appeals

for the Second Circuit

APPENDIX

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P/S

75-1393

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1393

UNITED STATES OF AMERICA,
Appellee,

—against—

JOE TRUMAN BOYD, ET AL.,
Defendants,

ERNEST R. MULLENAX,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Volume II—Pages A-507 to A-1116

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Q What happened next, as far as your activities were concerned?

A The next thing I done was go and start serving my time.

Q Do you recall the month of 1970?

A November.

MR. MacDONALD: We have nothing further on direct examination.

CROSS EXAMINATION

XX BY MR. SEGAL:

Q What was the name of thd stock you indicated you replaced the Select stock with in the Atoka Bank in September of 1970?

A Comutrics.

Q How many shares of Comutrics were submitted to the Atoka Bank as a replacement for the Select shares?

A I don't know.

Q Did you hear anything further from Mr. Brookshire bout having to replace stock of Select for loans that had been obtained from Atoka?

A No, sir.

Q When loans were taken at the Atoka Bank, I take it that either you or Mr. Hunt --

A I don't know a Mr. Hunt.

Mr. Hull.

Q You had taken some loans out at some banks; is that right?

A Yes. I took one loan out at the Atoka Bank.

Q Did Mr. Baker take any out?

A He took one out.

Q When you took out a loan at the Atoka Bank did you submit a financial statement?

A Did I?

Q Yes.

A Yes, I did.

Q Do you know whether or not Mr. Baker submitted a financial statement at that time when he took his loan out at the bank?

A I don't know whether he did or not.

Q I take it that you also signed a personal note when you took out a loan from Atoka?

A Yes, I did.

Q Do you know whether or not without the Select stock you wou would ever have received that loan from Atoka?

A The stock I put up was not Select.

Q What stock was it that you did put up?

A Pioneer Development Corporation.

Q Do you know whether or not if you had put up

Pioneer you would have received that loan?

A Say that again.

Q Do you know whether or not if you had put up no stock you would have received that loan?

A I don't know.

Q Actually it is true, is it not, that the note you signed was the thing that the bank was primarily after, your personal liability? Isn't that correct?

A Well, I really don't know, Mr. Segal.

Q Did you have any conversation about Pioneer stock when you put it up.

A I didn't have any conversation with Mr. Brookshire about it.

Q Do you know whether or not that Pioneer stock was merely an extra collateral where the primary collateral was actually the note you had signed for Mr. Brookshire?

A Well, my financial statement was not the greatest in the world. I don't know whether he made the loan to me without the stock or not.

Q You actually had at least some assets at the time, did you not?

A A few.

Q Did you have the trucking company at that time?

A No, sir, I did not.

Q The trucking company didn't happen until fairly recently; is that correct?

A Yes.

Q You had stated back in January of 1970 that when stock was presented to Mr. Brookshire at Atoka that Brookshire wanted to check the stock. Do you recall that testimony?

A Are you talking about at the time that I took Pioneer down there in January?

Q That's right?

A That's right.

Q Did he check the stock? Do you know?

A He must have because he called back two days later and said it was raided -- Mr. Boyd did.

Q Mr. Boyd had some relationship with Mr. Brookshire did he not?

A He must have had.

Q Do you know whether or not Mr. Boyd indicated to Mr. Brookshire that you are a reliable individual?

A I don't know.

Q You indicated that $25,000 was received on that loan; is that correct?

A That's true.

Q You kept part of those proceeds; is that right?

A That's true.

Q Do you know whether or not the stock that had been pledged was restricted stock or free traded stock?

A I was told it was free-traded stock.

Q That was Pioneer?

A Yes.

Q With regard to the Select stock, do you recall testifying that you had received some stock in connection with a loan -- and I will just call your attention to a page --

I call your attention to one particular page and I am pinting that out for you here in 84.

First, tell us when it was that this stock was used for a loan?

A This stock?

Q That's right. When?

A I don't even know it was put up for a loan.

Q Didn't you testify about how you received this stock and gave it to someone to pledge for a loan?

A No, I didn't testify to that, Mr. Segal. I testified that I went to Reno and transferred this stock and brought it back to Lubbock, Texas, and Mr. Boyd picked it up off my desk.

Q That stock was restricted?

A I don't know whether it was or not.

Q Look at the page I pointed out to you and see if that refreshes your recollection as to whether or not it was restricted?

A It states here that this stock is restricted.

Q What occasion was it that Select stock was used as part collateral for a loan? Do you recall?

A The only time I recall was when Mr. Boyd called me and told me, "Send Baker down there", and he made arrangements with Mr. Brookshire to make a loan on Select.

Q When was that?

A The date, Mr. Segal, I can't place. It was on the case that Mr. Baker went to Atoka.

(Continued on page 1038.)

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Q I show you Exhibit 371 and see if looking at this exhibit would refresh your recollection as to when it was that that occurred.

A January the 25th or '8th, I can't really read it -- 29th?

Q At least it was in January, is that consistent with your recollection as to when Select stock was used?

A Yes, sir.

Q Toward the end of January?

A That's what Mr. Boyd --

Q And do you recall whether or not any of that stock was restricted stock or not?

A I don't know, Mr. Segal. I didn't go down there and Mr. Boyd didn't tell me. He just told me to send Bruce down there and have him sign a note, that he had everything fixed up.

Q And you had pledged stock with a bank as collateral for loans before, hadn't you?

A Not stocks that I can think of. With the exception of the Pioneer stock at Atoka.

Q Well, when you pledged the Pioneer stock, did you think that there was anything improepr about pleding stock for a loan?

A No, I didn't know. Not as far as I knew. I guess

it was all right.

Q When Select stock was pledged, did you think there was anything wrong with pledging Select stock?

A Well, not that I know of. I just assumed that as long as one is on the market, that is supposed to have been all right at the time.

Q In other words, the transactions that you have talked about this morning and part of this afternoon in which stock was used to secure loans, as far as you are concerned, as far as you know there is nothing improper about pledging stock for a loan.

A I guess they pledge good stock every day.

Q And you didn't think that you were committing any crime at all, did you, when you were pledging stock for a loan?

A Well, at the time I sure didn't.

Q Now, you have an arrangement with the government, have you not, in which you are going to plead guilty to one count in the Select case; is that right?

A That's what -- I pleaded one count with a dismissal of the others.

Q When you made that arrangement, did you make any arrangement with the government about their not pursuing you in any problems that you might have had in conn-ction

with any other stock?

A Well, the only situation I had with them was stated in that thing.

Q How about Pioneer? Did you have a problem with Pioneer?

A Not that I knew of.

Q Did the government indicate to you that they had you on at least two different occasions and if you would plead to the Select case, they would forget the other two cases?

A No.

Q Nothing like that. You had no problem with regard to Pioneer stock?

A Well, it's my understanding that the Pioneer was already took care of but you know I don't really know. The only thing that I talked with the United States government about was just what was in that, that they wrote me out, that I showed, that was brought up here.

Q My question is, did you have any understanding that the government had other evidence about other transactions in which you had been involved that they would forget if you would plead to the Select indictment?

A Well, they didn't indicate it tome. All they just indicated to me is you know, that if I would be willing

to testify, well, they was dropping it to one count.

Q Do you recall ever stating to anyone that in fact the government had you nailed on Pioneer and in return for their forgetting about that, you decided to plead the Select?

A I don't remember ever telling anybody about it. Might have told my wife about it.

Q Is that what you told her?

A I don't know whether it is or not. I say I might. I thought a lot of things at the time.

Q In fact, isn't it true that you pleaded to Select stock even though you didn't feel you were guilty in the Select situation; you felt you were guilty in some others?

A No. The reason I pled to what I did, Mr. Segal is because my wife and kids -- that's the reason I pled.

Q Not because you felt you were guilty?

A I pled because I, for five years, I haven't done anything but work and that's the reason I pled, because I want to get it over with and quit flaking.

Q So the plea that you gave in Select really was because you wanted to be finished with the government and

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finished with exposure to going back into incarceration; is that right?

A Well, I pleaded for just the reasons like I told you, Mr. Segal.

Q I can understand.

Now, you testified some to making a market. You recall that, the term, making a market?

A Yes, sir.

Q And in terms of making a market, did you have any idea, is there anything that you can explain to us about what you know about what making a market is?

A Well, I really don't know what making a market is, I guess.

Q But you testified to that earlier. Do you recall that?

A Well, that's --

Q That Alan Segal was going to make a market in the Select stock.

A Right.

Q You remember that?

A Yes, sir, at that meeting.

Q But you don't really have any clear idea about what it is, do you?

A Well, I sure didn't at the time as well as I

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do now.

Q Well, is that because the government has said something to you about that?

A No, the government hasn't said anything to me about it.

Q Now, let me ask you, you know, don't you, that every day procedures on Wall Street or some brokers at least on Wall Street make a market in particular stocks? Isn't that true?

A I don't know, Mr. Segal.

Q Do you have any idea how stocks are bought and sold?

A Yes, sir.

Q Do you have any idea as to whether or not there are some people who deal in the particular stock as a kind of specialty?

A Well, I don't know.

Q I mean somebody who is more expert about say ABC stock than some other stock; do you know that there are some brokers like that?

A No. I just knew there was brokers.

Q You testified to some conversations relating to some acquisitions that Select had had. Do you recall that? You looked at some documents and you heard or over-

heard some conversations about what it was that was being put into Select Enterprises? Do you recall that?

A Yes, sir.

Q And do you recall any of the details about what you were hearing about whether the stuff that was going in was good? Let's deal with the Mica Mine, for instance.

Do you recall any specific conversation or any detail about a conversation relating to the Mica Mines?

A Well, on one or two occasions,yes.

Q And on those occasions that you did hear that in fact the mica was there?

A Was dead?

Q Was there?

A Was there?

Q Yes.

A Yes, sir, I remember hearing conversations that it was there.

Q And that the Mica Mine was for real and that it was potentially a producer of a substantial amount of Mica?

A Well, the Mica was in the ground, a bunch of it.

Q I'm sorry.

Q I'm sorry.

A There was a bunch of mica in the ground.

Q Do you know whether or not there was also some mica which was above ground,which had already been taken out and was stacked in a pile at that mine?

A I believe I heard conversation on that.

Q D o you recall whether or not you had heard about a, what number of tons, if it was in tons, of mica that was piled outside that mine?

A No, sir.

Q Do you know what the value of mica was in 1970?

A No, sir, I do not.

Q Do you know whether there was a market for it?

A No, sir, I don't.

Q Now, with regard to some land acquisitions, you have talked about the Imperial Valley. You remember that?

A Yes, sir.

Q Do you recall now whether it was Imperial Valley or Imperial County?

A I always took it as just Imperial Valley in California.

Q Are you familiar --

A In California.

Q Are you familiar with that area?

A No, sir.

Q Had you ever heard Imperial County talked of?

A I don't remember it, Mr. Segal.

Q Do you recall that any conversations with regard to that area of land might have been referred to in a shorthand way as the Imperial property?

A I just don't know. Could have been.

Q Do you know whether or not your use of the term Imperial Valley is as a result of your conversations with somebody in the government?

A Would you say that again?

Q Do you know whether or not your using the term Imperial Valley is as a result of conversations that you had with the government in preparation for your testimony here?

A No, sir, it wasn't.

Q It was not?

A No.

Q Now, when these conversations went on about what it was that Select was obtaining, did you at that point feel that there was a bona fide attempt by Mr. Boyd and others to put substantial properties into Select?

A I think there was a bona fide attempt.

Q And there was an attempt, was there not, to find good items and put them in; isn't that right?

You will have to answer. You shook your head.

A Yes. Well, on some occasions, I guess there was.

Q Now, let me ask you, isn't it true that very often one of the objectives in obtaining property or obtaining some asset is that you obtain that asset at a time when all it needs is some influsion or putting in of some funds in order to make it really work; that it may not be working at that point.

Is that true?

A Would you say that again, Mr. Segal?

Q Is it true that -- well, let me go at it in a slower way:

Have you ever made any purchases of property or ranch land or cattle?

A Yes, I have.

Q And there are some times, are there not, when you can get a better advantage as to price if you buy cattle or ranch lands or whatever, isn't the true?

A For cash, yes.

Q Well, cash is one item, isn't it?

If you pay cash you might get a better break on the price, isn't that right?

A Usually.

Q And sometimes, if the man can't finance his operation, even though he has got something good you might get a better price on that purchase, isn't that right?

A Yes.

Q And sometimes it is true, is it not, that the company needs some more money in order to make more acquisitic in order to make it more profitable; isn't that right?

A I would say that is probably true.

Q Do you know whether or not in fact that was what was happening with the acquisitions that were being made by Select?

A Well, I know it needed money bad.

Q Select needed money?

A Yes.

Q And do you know whether or not the operations that they were going into needed money?

A I am sure it did.

Q And do you know whether or not that worked to Select's advantage in terms of being able to acquire it at a lower price?

A Acquire what at a lower price?

Q Acquire the asset or the property, whatever it was.

A At a lower price?

Q At a lower price.

A Well, I don't follow what you mean there, Mr. Segal.

Q Well, if a company needed some money and Select was going to put the money into the company, it's possible, isn't it or it's true, isn't it, that Select would be able to acquire that company because money had to be put into it before it would take off, isn't that right, and they might get a better price on that because of that?

A It needed some money in it.

Q Because it needed some money?

A Right.

Q So the money that Select would have to put into that property or that asset would go to what would normally be the purchase price?

In other words, if I buy your jacket --

THE COURT: Mr. Segal, it seems to me that you have gotten too involved in these questions.

MR. SEGAL: Very well, your Honor.

THE COURT: I think that where you want to start from was whether Select was going to put any money

into anything.

Q Now, you testified to a conversation that you had with Mr. Alan Segal. Do you remember that?

A Well, on two occasions I had conversation with Mr. Segal.

Q Well, the one I am referring to is the one in which there was the necessity for obtaining a certified balance sheet and deeds and other supporting documents as to the acquisitions that had been made by Select.

Do you recall that conversation?

A This was a conversation on the telephone that he cammed me, looking for Mr. Boyd?

Q That's right, on the telephone.

That's right. It was a conversation that Mr. Boyd had had -- I am not sure whether I am accurate but is this right -- that Boyd had a conversation with Segal and called you back and told you about the conversation that he had had, is that right?

A Right. True, yes, sir.

Q And that would have been around February 20th of 1970?

A Somewhere after that date that Mr. Segal called.

Q Now, do you know what effort was made to obtain

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the kind of documentation that the SEC wanted?

A What effort was made.

Q What effort, what was done in order to get the material that the SEC wanted.

A Well, I don't know. I guess Mr. Boyd was a getting, trying to get the balance sheet and stuff and everything gathered up that Mr. Segal wanted.

Q But he did try to get it, as far as you know, isn't that correct?

A As far as I know, he did.

Q And he did deliver it to the SEC as far as you know, isn't that correct?

A I know that the documents that he give to the SEC, that he told me he give to the SEC.

Q And those documents were actually given in 1970, isn't that correct?

A 1970?

Q 1970.

A Yes.

Q And what was the date of your indictment in this case?

A In this case?

Q That's right.

A Gosh, I don't remember offhand. It's about --

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Q Is February 1975 anything that refreshes your recollection?

A Yes.

Q Five years, isn't that correct?

A Yes, sir.

Q Now, you had worked with certain individuals in your own enterprises, had you not, people who had assisted you in businesses that you were in?

A Yes, sir.

Q Mr. Hale would be among those, Mr. Baker would be among those?

A Yes, sir.

Q Mr. Darby?

A Mr. Who?

Q Is that right? Darby?

A Darby.

Q Now, these people had been in what kind of enterprises with you; what had been their role in the work that you did?

A Well, Mr. Hale used to work, run a motel for me and a cafe, several years back like in 1962 about 1967.

Q Was he a friend of yours?

A Yes, sir, he was.

Q Are you interested in seeing that he might, that his fortunes might rise with yours, that if you made some money he would have to make, he would like to make some money or you would like him to make some?

A Well, I would give him some of the money.

Q Was that the reason why you gave his name to Mr. Boyd in terms of putting Select stock in that name, in his name?

A Probably was.

Q Now, is that the same thing with Mr. Darby?

A No. Mr. Darby, no.

Q And I assume that was the same thing with -- was that Mary Baker?

A Bruce Baker.

Q Bruce Baker, was it?

A Yes.

Q You had occasion, did you not, to look at the mica balance sheet of C.A. Morris, is that right?

A Yes, sir.

Q Do you remember seeing that?

A Yes, sir.

Q Physically seeing that in that hotel room.

A Yes, sir.

Q And are you able to read a balance sheet?

A Fairly well.

Q Do you know anything about mining?

A No, sir.

Q Are you in a position to state about what kind of property the Mica Mine was?

A No, sir.

Q How familiar are you with Midland, Texas?

A Midland, Texas?

Q Yes.

A Just fair.

Q Well, does that mean that you can tell us whether or not Midland is now a thriving community?

A I think it's about 150,000 people.

Q Has it grown, do you know, within the last few years?

A I don't know whether it has or not.

Q Do you know the location of the South Midland properties that were looked at or were a part of and acquired by Select properties?

A I've seen them.

Q Select Enterprises.

A I've seen them six, well, several years ago.

Q Do you know whether that property is just across the street from what is the center of town?

A That's not my recollection, it isn't.

Q Do you know if there is a road leading in from what is the main street in town?

A I don't know what the main street is.

Q Do you know if directly across from that property there now is a junior high that's been built?

A No, sir, I don't know that.

Q Do you know that a shopping center has been built there?

A No, sir.

Q What if any conversation did you have about the Riverside properties and the Diamond Bros. property?

A What conversation did I have?

Q Yes.

A Nothing with the exception that I seem them in the hotel room and Joe was telling me about them and he told me that, I asked him about the Riverside and he said that -- I said him, I said, does Segal own that and he said yes, him and some associates.

Q Anything else?

Anything about the value of that property?

A No. He didn't say anything about the value of the property. I just had been by there a week before and it was changed, all locked up by the Internal Revenue is

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the reason I brought it up.

Q Was it a big hotel?

A It looked big to me.

Q Was it a long the strip?

A Yes, it was right, right there in Reno.

Q Had you ever had occasion before it was closed to be in that hotel?

A I don't believe I was.

Q Did you know anything about Diamond Bros.?

A No, sir, I don't.

Q Did you have any idea what business they were in?

A Furniture, I understood.

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Q Do you know what the size of that business was?

A No, sir.

Q Now, you testified to the fact that an insurance policy had been taken out in your name; is that right?

A I testified that Mr. Bickel had wrote an insurance policy on me and Mr. Boyd.

Q And do you know whether or not insurance policies are normally taken out in order to be sure that certain individuals will remain with the company or healthy in that company because the success may depend on them?

A I am sure it does.

Q And is that why a policy was taken out in your name?

A I don't think so.

Q Did you pay any money for the policy?

A No, sir.

Q Were you given any reasons why a policy had been taken out in your name?

A They probably was some but I can't remember them right how.

Q Are there any reasons that you can recall about why it was taken out in Mr. Boyd's name?

A No.

jbas2 Joiner - cross

Q Was this request that of Mr. Bickel? Is he the one that made the request?

A I don't remember who made the request at the time. It was me or Joe or --

Q Well, did you make the request that an insurance policy be taken out in your name?

A No. I don't think so. I think Mr. Bickel offered it to us and we just took it.

Q It didn't cost anything?

A No, it didn't.

Q All you had to do was sign a piece of paper, right?

And who was the beneficiary on that policy?

A I don't remember.

Q Do you remember whether or not it was Mr. Bickel's company?

A No, I don't.

Q You had talked about Headley and Carver. Do you remember that?

A Yes.

Q Were they friends of yours?

A No, sir.

Q Were you in any business transactions with them?

A I was in a business transaction with

Mr. Headley only I had never met Mr. Carver.

Q And when stock was pledged for a loan from Mr. Headley was that to help him out?

A Well, the stock was pledged for Mr. Carver to borrow some money with, through Mr. Headley.

Q And that was to help out Mr. Carver and Mr. Headley or just Mr. Carver?

A Mr. Carver and me, I guess.

Q When you say you, you benefited by that loan yourself personally?

A $5000.

Q And that was for giving them some stock?

A Yes.

Q And did you ever benefit personally from other stocks that you had given to somebody to help them out?

A On the occasion with Mr. Mullenax and Mr. Brookshire. And Mr. Carver, Mr. Headley.

Q In other words, when your luck was turning and you were sort of down on your luck, it was necessary for you to raise some money, was it not?

A Yes.

Q What you did was take some stock or you knew where some stock was and you would acquire or get that

stock and you would lend it to somebody, is that right?

Q Well, I just get some stock.

Q And you would make some money because of lending it to somebody, is that correct?

A Yes.

Q And that was one way you had of turning over a dollar so that you would have some dough, isn't that right?

A I needed some money.

Q When you spoke to Mr. Boyd about the need for doing that, did he approve of that because he wanted to help you out?

A I imagine he did.

Q And when you got that money, did you use that money for your business or did you use it for your family or in what way did you use the proceeds that you got from lending that stock out?

A I used it several different ways.

Q But at least you used it for yourself?

A I used it for myself.

Q You testified about Exhibit 30 and 3-C. Do you recall that? 30 was the telegram and 3-C is this letter which I will show you.

A Yes.

A 536

jbas5 Joiner - cross

Q It's true, isn't it, that those two documents, 3-C and 30, were in the hotel room on the day that you saw them; isn't that correct, the day that you testified about a meeting with Mr. Barnett at the Holiday Inn Dallas? Do you remember that?

A Yes.

Q And it was when the telegram was produced that Barnett signed that statement, isn't that correct?

A Well, I don't think he done it right off, real quick like but it was about an hour up there.

Q Barnett was attempting to get as much documentation as he could so that he could be in a position to certify the statement; isn't that correct?

A Well, I don't know, Mr. Segal. You would have to ask Mr. Barnett about that.

Q Now, when you saw these documents, these documents were in whose possession?

A Well, I believe they was just laying on the bed.

Q And that document which is 3-C, that was already signed and had that letter on top of it at the time you saw it, isn't that right?

A I don't recall it being signed.

Q You don't recall that being signed on the day

that you saw that document for the first time?

A No, sir. I believe it was signed during that meeting.

Q Did you see it signed?

A No, sir, I didn't. I had my back turned, looking out the window, I believe. Because I remember when I turned around, why, they was -- I didn't know Mr. Barnett, I had first met him and Joe knew him and Joe was kind of making, doing most of the talking to him and I was kind of looking out the window and not paying too much attention.

Q Now, how often or how much did you ever read that stockholders' or shareholders' release?

A Sir?

Q Do you remember the shareholders' release that you saw? You say, incidentally, that it was Mr. Chapel who was making --

THE COURT: You better tell the witness what you are talking about by a release. The publicity to the shareholders, I think he is talking about. The letter.

A The letter?

Q I show you Exhibit No. 4-A. may not be the precise document that you looked at but you take

ourword for it that it is a similar document.

Do you remember that document?

A Yes.

Q Now, did you ever read that document closely?

A Yes.

Q And when was the first occasion that you read that document?

A Up in Mr. Bickel's office, One Main Place.

Q Was Mr. Chapel there?

A Yes, he was.

Q And was that document already written or was it being written?

A Well, the best I recall, there was a draft made of it.

Q And you read it in draft form; is that correct?

A I believe it was typed out but it was a draft, you know.

Q Yes. Well, that is what I mean. It was just not in any finished printed form; it was just in typed form, right?

A Well, I seen, you know, this, before the day was over.

Q Now, you really had not very much familiarity with the extent of the California properties, did you?

A I never seen them.

Q You had no familiarity with the Mica properties either, did you?

A I never seen them.

Q And you have very little if any familiarity with the oil producing properties, isn't that correct?

A I never seen them.

Q And despite all of that, you made a comment about that document, didn't you?

A Made it about the California property.

Q What do you know about the California property?

A Didn't know, I never had seen it.

Q But that didn't stop you from making a comment, did it?

A Not hardly.

Q Mr. Joiner, what could you know about the pink sheets? Anything at all?

A Yes, I know a lot about them.

Q Do you know how stock gets into the pink sheets or how names of stock get in the pink sheets?

A I guess it has to have some brokers in it, doesn't it, and the brokers put it in the pink sheets?

Q I am supposed to be questioning you.

Do you know if that is the case?

A 540

jbas9 Joiner - cross

A I guess. I assume so.

Q Do you know any of the mechanics of it? Do you know how it happens?

A No, sir.

Q You had been approached, had you not, by Virgil Barker, who talked to you about some brokers getting in the pink sheets? Do you remember that?

A Yes.

Q Who is Mr. Virgil Barker?

A I don't know. He just is a man that come over to the office two or three times. I don't know. I guess he was just a promoter.

Q On the basis of the meeting with Mr. Virgil Barker, you went out and got some stock and you put it into a broker's name that he gave you, didn't you?

A Put it in his name, and Harbottle's name. I don't know whether they were brokers or not.

Q Who is Harbottle?

A I don't even know him.

Q Did you get any money for doing this?

A No, sir.

Q Did you know who you were dealing with?

A Not real well.

Q Did you get any documents which would indicate

jbas10 Joiner - cross

that stock was being given to anybody?

A I don't remember any.

Q Just on that basis, you gave him how many shares of stock?

A I don't know how many shares of stock I gave him.

Q Do you know if you gave him any?

A Yes, I gave him some.

Q How much?

A How much? I said I don't know.

Q You testified about a Mr. Stevenson in Florida. Do you remember that?

A Yes.

Q And Hale had talked with Stevenson; is that correct? Mr. Hale had talked to Stevenson?

A Yes.

Q And do you remember what that conversation was that you had with Mr. Hale about his conversation with Mr. Stevenson?

A He just said Mr. Stevenson had some people that was interested in buying some investment stock if it was good.

Q Now, do you know what investment stock is?

A Well, I thought I did.

A 542

jbas11 Joiner - cross

Q Well, did you change your mind recently?

A I'll put it like this -- I thought I did at the time.

Q And what you felt you were doing at the time was entirely proper, isn't that correct?

A Well, I say I thought I knew what investment stock was at the time.

Q Did you think what you were doing at the time that you spoke to Mr. Hale about Mr. Stevenson's request was entirely proper?

A I didn't know whether it was proper or not. I just needed some money.

Q And you did it?

A I did it.

Q And do you know or did you get any money for doing that?

A No, sir.

Q Did you take the proceeds and put it in your pocket?

A If I didn't get no money, I didn't get no proceeds.

Q So that was a requirement, wasn't it? It had to be in your pocket or they got no stock?

A Beg pardon?

jbas12 Joiner - cross

Q It had to be in your pocket or they got no stock?

A The money had to be in the --

Q In your pocket.

A I didn't get no money.

Q What did you get for it?

A I didn't get nothing.

Q You just did it because you are a good guy?

A No. I did it because I took the stock, Sam took the stock down there, hoping that the man could get it done but he never did get it done and Select folded up so it didn't make any difference.

Q What did you have in mind about what investment stock was at that time?

A Well, I thought investment stock was the stock which you kept for two years before it could be sold.

Q But, at any rate, whether it was a two-year period of whatever the period, the stock could not be sold unless something happened first, isn't that it?

A The stock couldn't be sold, wasn't supposed to be able to be sold for two years.

Q Well, we won't argue about that. Lawyers are still arguing about that.

At any rate, it couldn't be sold for at least

A 544

jbas13 Joiner - cross

a certain period of time.

Do you know if it needed anything else?

A Not that I know of.

Q Do you know whether or not people who buy investment stock are supposed to be people who are knowledgeable in the stock market and are knowledgeable enough so that they don't need extra protections?

Have you ever heard of that idea?

A You are going to have to say that again.

Q I don't know if I can.

We'll let the reporter say that.

THE COURT: I think you can skip it.

MR. SEGAL: Very well, your Honor.

I have no further questions, your Honor.

THE COURT: Mr. Stokamer?

MR. STOKAMER: May I inquire from here? I have a few questions.

CROSS-EXAMINATION

BY MR. STOKAMER:

Q I represent Mr. Goodloe as I think you might know.

THE COURT: Which Goodloe?

MR. STOKAMER: Ernest Goodloe. Ed Goodloe.

Q When you first discussed the possible officers

of Select, you mentioned that R. B. Goodloe was a prospective vice president, is that correct?

A Yes. That is what Mr. Boyd told me.

Q And does R. B. also have a nickname of Parker Goodloe?

A I believe he did.

Q And R. B. Goodloe is not the Mr. Goodloe who has just stood up and is in court today, is that correct?

A No, sir.

Q Is that correct?

A No, sir. That is correct.

Q Referring to your testimor wherein you talked about a March 5. 1970 -- going and picking up Ed Goodloe's stock, 60,000 shares -- do you understand what I am referring to now?

A Yes.

Q When you picked up the stock, had the powers already been signed?

A Yes, they had already been signed.

Q In fact, when you picked up the stock, Ed Goodloe wasn't in the office or in the area from where it was picked up, is that correct?

Q That is correct. He wasn't in the office.

Q Right. And that stock was filled out to Ed Goodloe - Trustee, right? That was the name in which the stock was filled out.

If you would like to refresh your recollection, I believe it is in evidence, 339.

A I believe that is true.

Q But that is correct, is it not?

A Yes.

MR. STOKAMER: Thank you.

THE COURT: Mr. Goldman.

CROSS-EXAMINATION

BY MR. GOLDMAN:

THE COURT: Mr. Goldman represents Mr. Ford.

MR. GOLDMAN: Yes.

Q Mr. Joiner, you testified that at a meeting in Reno, you met Mr. Acton and Mr. Boyd. Do you recall that first meeting in Reno, sir?

A I met Mr. Acton, Mr. Boyd and Mr. Segal.

Q Yes. And Mr. Alan Segal.

A Yes.

Q Can you give us your best recollection of the date of that meeting?

A Somewhere around the 13th, I think, 14th, somewhere in there, I think.

Q Of January?

A I think, yes.

Q And at that meeting, Mr. Boyd discussed various properties that had been acquired by Select, is that correct, sir?

A Yes.

Q And that included the mica mines?

A Yes.

Q And the oil and gas properties also?

A Yes.

Q And then again you had a further meeting in La Mesa.

Do you remember the date of that meeting?

A La Mesa?

Q La Mesa, yes.

A No, sir, I don't. It would be right after the date at the back on Mr. -- the first back proceeds come from Atoka. And I don't remember what the date was.

Q Would that be the end of January, the beginning of February, approximately?

A I would say yes.

Q And you also had a discussion of those properties.

A A short discussion, yes.

A 548

jbas17 Joiner - cross

Q Sir, you testified as to Exhibit 339-A that you received these in Mr. Ford's office on March 5, I believe, is that correct?

A Yes.

Q Do you recall where you received those documents?

A Where?

Q Where. Physically in the office.

A Mr. Ford's office. Where in his office?

Q Yes.

A Gosh, I couldn't tell you, fella.

Q Do you recall what kind of building it was?

A Not five years ago.

Q Had you met Mr. Ford prior to that?

A No, sir.

Q Now, you have seen Mr. Ford since that time, haven't you?

A Yes, sir.

Q And you once discussed the possibility of an appeal of the case with him?

A Right.

Q Your case, is that correct?

A Right.

Q Do you recall when you received those documents, were they in an envelope?

A I don't believe they was because I had to sign my name right there.

Q Would you look at the top of the page of the first page of 339-A in evidence -- is that a receipt, sir?

A It says so, yes, sir.

Q And you signed that?

A Yes, sir.

Q And does it mention Mr. Ford's name on that document?

A I don't see Mr. Ford's name on it.

Q It indicates that you received it from Mr. Goodloe, is that correct?

A That is not correct.

Q Excuse me?

THE COURT: He says that is not correct.

THE WITNESS: That is not correct.

Q But that document indicates receipt from Mr. Goodloe, does it not?

A It indicates that there is a receipt for Mr. Goodloe.

Q Well, do you recall whether Mr. Goodloe had an office in that building?

A I didn't know Mr. Goodloe at all.

Q Sir, let me show you Government Exhibit 327 for identification, page 86, toward the bottom and I ask you to read from line 16 on that page --

MR. STOKAMER: Before the witness reads it, may I see it, please?

THE COURT: I don't think it is necessary to interrupt this cross examination for that. He has asked him to look at something.

A You want me to read through what?

Q To yourself, sir, on line 16 of that page, through line 22 of the following page.

THE COURT: You mean line 22, page 87?

MR. GOLDMAN: Yes, sir.

A I am done.

Q Does having read that refresh your recollection as to who physically gave you the stock, sir?

A No, it doesn't.

Q Now, sir, you have before you 339, attaching to 339A certain stock, is that correct?

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q Can you tell us whether that is stamped with investment legend?

A This receipt?

n4

Q You know the stock?

A Yes. It shows that.

Q Is it your understanding that that is "investment stock", as you described it to Mr. Segal?

A Yes.

Q What does that mean to you?

THE COURT: We went over that?

A Just as what I told Mr. Segal.

MR. GOLDMAN: No further questions.

MR. KRIEGER: I have no questions, your Honor.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Mr. Joiner, my name is Bill Richman and I represent Emerson Titlow.

I am going to ask you to search back your memory five years --

THE COURT: Next question, please.

MR. RICHMAN: I am coming to it, Judge.

THE COURT: It does not require a travelogue or long initial statement. Please go on with your questioning.

MR. RICHMAN: I apologize to the Court.

Q You told us about going to Mr. Bissett's office one morning for a closing?

A Yes.

Q And Mr. Bissett was in court and then you went to Mr. Titlow's office; do you remember that?

A No, sir. I was mistaken. We went to meet Mr. Titlow first and then we went to Mr. Bissett's office.

Q Did you go to Mr. Bisett's office again that afternoon?

A I didn't.

Q So you were not at the closing?

A I was just in there when Mr. Bissett was there and he was there, but he had to go to Court.

Q You were not at the closing, were you?

A No, sir.

Q You don't know what happened at the closing, do you?

A I just testified to what I said.

Q You didn't see anybody handing over $40,000, did you?

A I didn't say I did.

Q I am asking you: Did you?

A No, sir.

Q Do you know Mr. Trainor?

A Not that I can recall.

Q Do you know Mr. Johnson?

A Not that I can recall.

Q Do you know Mr. Campbell?

A No.

Q Do you know Mr. Bissett?

A Yes, sir.

Q When was the first time you saw him?

A It was on that occasion. It could have been on another one.

Q You just told us you went to his office and he was not there?

A No. I said we went to his office and he had to go to court and didn't have time to close.

Q You did see him at the office?

A That's right.

MR. RICHMAN: I have no further questions.

MR. EHRLICH: I do have some questions, your Honor.

THE COURT: Mr. Ehrlich represents Mr. Mullenax.

CROSS EXAMINATION

BY MR. EHRLICH:

Q As his Honor indicated, I represent Dr. Mullenax. Was it immediately subsequent to the time that you had your meeting with Rouse and Mullenax that you executed the assignments of a stock?

A Was it at what time?

Q Was it right after you had the meeting with Rouse and Mullenax that you went to the bank and executed assignments of Select stock?

A They were there a day or two before.

Q Do you know the date of the execution of those assignments? Do you know what date you signed the assignments?

A I don't know the date.

Q Mr. Joiner, I ask you to look at Government Exhibit 107 for identification, 111 and 123. Please tell the members of the jury the date the assignments were executed by you?

A May 7, 1970.

Q Your meeting with Rouse and Mullenax was on or about May 7, 1970; is that correct?

A I do not know.

Q You said it was a day or two before the time you executed the assignments; is that not so? It was close to that period of time?

A Somewhere in there. Give or take a week.

Q A week's latitude?

A Yes.

Q Mr. Joiner, I ask you to take a look at the

reverse side of what has been marked as Government Exhibit 296-A in evidence. I just want to ask you this:

Is this your signature?

A It is.

Q Do you know about the accomplishments of Mr. Touse and Dr. Mullenax in the insurance industry?

A About the accomplishments?

Q Do you know that Mr. Rouse was in the insurance business?

A Did I know he was?

Q Yes.

A He said he was on my first meeting with him.

Q Did he tell you about his accomplishments in the insurance industry?

A What do you mean?

Q About his past, what type of work he had performed in that line of business?

A No.

Q And Dr. Mullenax never mentioned anything about that to you either?

A They could have on some occasion. We done a lot of drinking.

MR. EHRLICH: Thank you very much.

MR. LESSER: No questions.

MR. RHODES: I do have a question or two, your Honor.

THE COURT: Mr. Rhodes represents Mr. Barnett.

CROSS EXAMINATION

BY MR. RHODES:

Q I believe you stated earlier that you received from Mr. Boyd a balance sheet dated, or at least prepared, some time prior to the date you had seen it on March 13, 1970; is that correct?

A Repeat your question.

Q I believe you stated earlier -- and I am going to examine you with respect to your testimony relative to the statement -- you observed and examined a balance sheet on Select Enterprises shown to you by Mr. Boyd on or about March 13, 1970. Do you recall making that statement?

A Yes, sir. I don't know where it was but --

Q With respect to that you stated it was a balance sheet; is that correct?

A I need to know exactly where I am at. I seen several balance sheets. Could you place me where I am supposed to be?

Q I will in a moment.

At this point I am asking you if you have a memory at this time as to what you observed on March 13,

1970, if anything, relative to a Select Enterprises balance sheet?

A March 13th? I don't recall. I know the date, but you will have to place me where it is.

Q Are you familiar at this time with what, if anything, Mr. Boyd gave you from memory without looking at anything on March 13, 1970?

A Mr. Boyd showed me several things, Mr. Rhodes. You are going to have to place me where I am because I can't tell you.

Q It is difficult for you to remember that far back in your mind?

THE COURT: That's not what he is saying to you. He is saying you will have to identify what you mean because Boyd gave him several things.

What is it you want to call his attention to?

MR. RHODES: I am testing his memory at this time, your Honor.

Q Are you familiar with the word "pro forma" on any balance sheet that you may have examined?

A Pro forma?

Q The word "pro forma"?

A I am familiar with the word.

Q Have you seen that word on any balance sheet

you examined with respect to --

A I have seen it on the first one that was given of Select.

Q When was the first one given?

A The first one I seen was Mr. Boyd showed it to me and it was either three or four different occasions. It was the first one.

Q Could that have been in January?

A I think so. It was the first one after C. A. Morris.

Q I want to ask you specifically whether or not you recall who, if anybody, was with Mr. Barnett on March 29th at the motel in Dallas when he delivered the certified balance sheet to Mr. Boyd?

A It seemed like there was -- I can't place who it was.

Q Where did you first see Mr. Barnett?

A Down in the cafe.

Q Do you recall whether anybody was with him down there?

A I don't recall whether somebody was down there or not. Maybe one or two people, but I can't recall who they were.

Q I believe you stated you went upstairs to a

room?

A Yes.

Q Do you recall who was with him when you went upstairs to a room?

A No, sir.

Q I think you stated earlier that Mr. Barnett was there approximately an hour; is that your testimony?

A I think somewhere in there.

Q Could it have been more like five or ten minutes?

A It was more than five or ten minutes.

Q Do you recall who was with you?

A I recall me and Mr. Barnett and Mr. Boyd in the room. I don't recall who the other people were, if any.

Q If I mentioned Mr. Barnett's wife, would that refresh your recollection?

A No, it would not.

Q You do think someone was with him?

A I think someone was with Mr. Barnett or Mr. Boyd; but I just recall vaguely seeing somebody else being there.

Q I believe you also said that the time Mr. Barnett was there with Mr. Boyd he stated that there was an item he needed and he had obtained that item; is that

correct?

A That's correct.

Q That was the telegram?

A There was a telegram there and I assumed it was the item he was needing.

Q Further testing your memory, specifically, you said earlier there may have been a conversation between Mr. Boyd and Mr. Barnett relative to the need for additional items but you were not sure; is that correct?

A That's correcft.

Q I believe you mentioned about the items you were not sure of, the fact that Mr. Barnett may have mentioned something about a title company, but you were not sure of it.

Did the Government bring up to you in the conversation you had with the Government prior to your testifying today the matter about the title policy?

A They did not.

Q Mr. MacDonald didn't mention something to you specifically about that?

A No, he did not.

Q Nobody did?

A Well, he may have brought it up in his conversation, but I have had enough to do with land to know you need

a title policy with it.

Q Would that have been something that caused you to even mention the title policy a moment ago in your statement?

A No. It would not, because somebody was supposed to get a title policy for it.

Q Mr. Boyd on this occasion, do you recall, whether or not he assured Mr. Burnett that there was any title policy --

A I don't even know that the title policy was what the conversation was about.

Q On this occasion you mentioned that Mr. Barnett stated that he wanted to be paid for the work he had performed; is that correct?

A Yes.

Q There was no situation whereby Mr. Boyd was trying to pay Mr. Barnett off or anything relative to money?

A I didn't take it as that.

Q You took it merely that Mr. Barnett wanted payment for the accounting work he had performed, like anybody?

A That's the way I took it.

Q Was there any money whatsoever that changed

hands on this occasion?

A I didn't see any.

Q Mr. Boyd assured Mr. Barnett he would be paid for his account work that he was doing?

A Yes, sir.

Q Specifically, was there any mention whatsoever at any time relative to any hurry for this particular audit on this occasion through Mr. Barnett?

A If there was any hurry for it?

Q Yes.

A If it was mentioned to Mr. Barnett from Mr. Boyd?

Q Yes, sir. If you can remember.

A I don't specifically remember him saying it to Mr. Barnett, no.

Q Further, do you recall as to whether or not there was any discussion regarding the Securities and Exchange Commission investigation or requirement or audit?

A No. I don't remember any conversation like that.

MR. RHODES: That's all I have.

MR. BERGER: I have Nothing, your Honor.

MR. DULSKY: Nothing, your Honor.

MR. CONCANNON: Nothing, your Honor.

MR. ROONEY: Nothing, your Honor.

MR. BRODERICK: Yes, your Honor.

CROSS EXAMINATION

BY MR. BRODERICK:

Q Mr. Joiner, maybe I didn't hear you correctly. Did you ever mention the name Gardner in your testimony at all?

A Gardner, no.

Q I represent Michael Gardner. Did you mention him in your testimony at all?

A Not that I know of.

Q You never got any phone call from New York from a Mr. Gardner, did you?

A Are you saying Mr. Gardner?

Q Yes.

A You are not saying Karfunkel?

Q No.

A I'm not sure I recall Mr. Gardner.

THE COURT: Is there any redirect?

MR. MacDONALD: I neglected to offer Government Exhibit 337 at the conclusion of the direct examination. I intended to do it and I would ask the Court --

THE COURT: What is that?

MR. McDONALD: Here it is (indicating).

pgs Joiner -

THE COURT: You are offering it now?

MR. MacDONALD: Yes, your Honor.

THE COURT: It will be received.

(Government's Exhibit 337 was received in evidence.)

THE COURT: Let's have a short recess for the jury.

(Jury excused.)

THE COURT: Mr. Broderick, step up here with your client.

(At the bench.)

THE COURT: I have a note from you, Mr. Broderick, saying your client -- this is the second time or maybe even the third time -- wants to remain in the courtroom and eat his lunch in the courtroom. You say it is for the purpose of preparing his defense. My own impression is that it is for the purpose of avoiding the requirements of the custody in which he is apparently contained under a conviction that presumably he is confined under.

These criticisms that you have made here, Mr. Gardner, are worthy of a jailhouse lawyer. Your references here that you have been limited primarily to one meeting with your attorney, I won't even deign to refer to.

I think that your attempt in this court, as

RICHARD D. NICHOLS, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUSSMAN:

Q Mr. Nichols, would you tell us, please, your age, where you live and what you do for a living?

A I am 49 years of age. I am the president of Home State Bank of McPherson, Kansas. I am in banking.

Q Where do you live?

A In McPherson, Kansas.

Q Directing your attention to the years 1969 and 1970, more particularly 1970, could you tell us what you did for a living at that time and where you did it?

A Yes, sir. I was managing officer of the Home State Bank.

Q Same bank?

A In McPherson, the same thing that I am doing now.

Q Did you have occasion in the year 1970, in connection with your work at that bank, to meet a man named Ernest Mullenax?

A I did.

Q Do you see Mr. Mullenax in the courtroom?

A Yes, I do.

Q Would you point him out, please? Tell us what he is wearing and where he is sitting.

A He is wearing a dark blue suit and he has glasses and he is sitting right there (pointing).

MR. SUSSMAN: May the record reflect the correct identification, your Honor?

THE COURT: Yes.

Q Directing your attention to May of 1970, Mr. Nichols, did You have occasion during that month to speak with Mr. Mullenax concerning his relations, if any, with your bank?

A I did.

Q Will you tell us, please, when you first spoke with him in that month on that subject?

A That month I spoke with him on the telephone and then in person.

Q Let's consider the telephone conversation.

Do you recall the date or the day of the week on which that occurred?

A He called me on a Friday night when I was at home -- this was a telephone call; he was in Wichita, I understood, at the time, and I was in McPherson and he called me relative to a loan that we had with him at the

jbs

time

Q Would you tell the jury, please, what the status of that loan was at that time?

A The loan was past due.

Q Can you tell the jury approximately how large it was in numbers?

A Approximately $43,000.

Q Did you have occasion to have conversation with Mr. Mullenax over the telephone on that Friday evening in May, 1970?

A Yes, I did.

Q Would you please tell the jury, first, whether there was anybody else who was a party to that conversation and, then, what the substance of the conversation was.

A There was no one else present or party to the conversation.

The substance of the conversation was basically that Mr. Mullenax stated that things were looking up for him, that he had succeeded in selling a substantial amount of an investment that he had and, in order to make us feel better or more secure with our loan, offered to bring up some more collateral to stand behind the loan, if we so desired.

Q Did he specify what collateral it was that he

offered to bring up?

A Yes. At that time he said he would bring us 10,000 shares of Select Enterprises, Inc., stock.

Q What, if anything, did he say with respect to Select Enterprises, Inc.?

A I was not familiar with this stock and so we talked about it briefly and he said this was trading around $10 to $12 per share.

Q Was there anything else said in the course of that phone conversation?

A That this was being traded -- it was an over-the-counter market. I didn't know whether this was offered on the New York Stock Exchange or where. He said it was an over-the-counter market and also that he had succeeded in selling some of his investment and would be able to clear up his entire indebtedness with us before very long.

Q Did there come a time thereafter when you again spoke to Mr. Mullenax on the subject of his indebtedness to your bank?

A He came to the bank the very next morning.

Q What day of the week was that, sir?

A That was a Saturday morning. He delivered the stock.

Q Would you look in the pile of exhibits in front of you and look at Exhibits 105, 106 and 107 and tell the jury as to each of those exhibits whether you are able to identify them.

A Yes. This is the stock.

Q Which is "this"?

A This is Exhibit 105.

Q Look at 106 and 107.

A This is a stock power assignment that he executed for the stock that he left.

Q What is the number on that one?

A That is 106. Excuse me.

Q Would uou look at 107?

A 107 is a stock power assignment. The stock was registered in the name of a J. J. Joiner. This gives the right -- is an assignment from J. J. Joiner to Ernest Mullenax, transferring the stock to him.

This is also one he left with us, and that is 107.

Q Would you look at the reverse of 107 and you will see some handwriting.

Do you know as to any of that handwriting who put it on there and, if the answer to that is "Yes" will you please specify the handwriting that you know about and

who put on that handwriting.

A On the upper left five lines, this handwriting was done in my presence by Ernest Mullenax that morning, listing who the transfer agent for the stock was.

Q What about the other handwriting? The phone numbers, names and the addresses.

A I don't know who wrote those. Those, I think, are notes made at some later date, put down phone numbers and things. I couldn't say for sure.

MR. SUSSMAN: Your Honor, Exhibit 105 has already been admitted in evidence. We offer Exhibits 106 and 107 and, with respect to 107, to the extent also of the identified handwriting but not including the unidentified handwriting.

THE COURT: All right.

(Government's Exhibits 106 and 107 were received in evidence.)

(Continued on next page.)

Q Mr. Nichols, I neglected to ask you, was there anybody else present that morning at the bank besides yourself and Mr. Mullenax?

A Yes. Our legal counsel was in the room with me and with Mr. Mullenax. This man's name, he was an attorney for the bank, his name was Dick Jones.

Q Directing your attention to Exhibit 4-D and 5-A in front of you, can you identify those documents?

A I can.

Q Take them one at a time.

Tell us what 4-D is?

A That is a stockholders' news release that told about --

Q Relating to what company?

A Select Enterprises, Inc.

Q If you will look at the back of the last page you will see some handwriting.

Can you tell the jury who put that handwriting on there?

A Ernest Mullenax.

Q That was done in your presence?

A Yes.

MR. SUSSMAN: We offer the exhibit, your Honor.

MR. EHRLICH: May I see it, your Honor?

(Pause.)

THE COURT: Go ahead with your next question.

Q With regard to Exhibit 5-A, Mr. Nichols, can you identify that exhibit and, if so, please tell us what it is?

A Yes. I can identify it. 5-A is an informational pamphlet telling about Select Enterprises, Inc.

Q Have you ever seen it before?

A Yes.

Q Where did you see it?

A This was also given to me by Ernest Mullenax that same morning.

MR. SUSSMAN: We offer the exhibit.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q With respect to Exhibit 4-D for identification, there is this particular word I am pointing to on the back (indicating). Was that also written by Mr. Mullenax?

A No. That was not. Someone else wrote that. I'm sorry, I should have said that.

MR. EHRLICH: Your Honor, I have no objection except for redaction, with respect to the one particular word --

MR. SUSSMAN: We have no objection to the

deletion of that word.

THE COURT: It will be received.

(Government's Exhibits 4-D and 5-A were received in evidence.)

Q Mr. Nichols, while Mr. Mullenax was with you and Mr. Jones on this morning in May, did you have occasion to have any conversation with him, Mr. Mullenax? If so, please tell the jury what that conversation was?

A Mr. Mullenax discussed the stock that he was leaving with us as collateral, again repeating some of the same statements he had made over the telephone, telling us in general the trading range and the fact that it was an over-th e-counter market security and listed the places where this was being traded. He also repeated the idea that he had sold substantial interests or the whole interest in some of his enterprises and should have a substantial amount of money coming in very shortly and would be able to pay off the bank in full.

Q What if anything did he say by way of describing these enterprises which he had sold?

A i can't remember how he described them.

Q Let me direct your attention, Mr. Nichols, to the back of the last page of 4-D in evidence and ask you if Mr. Mullenax said anything with respect to the hand-

written material on that page and, if so, what he said?

A He said he would make a list of where this stock was being traded for us. We inquired about that. He wrote this down.

THE COURT: Read off what he wrote down.

THE WITNESS: He wrote down:

Crown Securities, John Wells, New York, New York; the phone number which is 212, 349-7210.

He wrote Reed Securities, Kansas City, and the name of the person, Jack Reed, phone number 816, 221-2726.

Enterprise Investments, Mel Richards, Las Vegas, 702, 382-7030.

Dalen Investments, Dale Regent, Miami, 305, 358-2511.

St. Louis Securities, St. Louis.

BY MR. SUSSMAN:

Q Directing you, Mr. Nichols, to this portion in the upper left-hand corner of the back of Exibit 107, can you tell us what if any conversation you had with Mr. Mullenax concerning that handwritten material?

A As I recall the information was just very brief. The fact that the transfer agent is Rocky Mountain Securities Transfer Company, Inc., 1016, Bank of New Mexico Building, Albuquerque, New Mexico. He listed this.

Q Directing your attention to July of 1970, did you have occasion in that month to have a telephone conversation with Mr. Mullenax concerning the stock which he had delivered to you in May?

A Yes.

Q Would you tell the jury, please, what the substance of that conversation was?

A We had been trying to get a hold of Ernest Mullenax, rather unsuccessfully --

MR. EHRLICH: Objection, your Honor.

THE COURT: That may be stricken.

Just start right in with the conversation, and if you have to explain the conversation you may do that later.

What occurred in this period that is being inquired about?

A (Continuing) The conversation regarded the fact that he had been delayed in getting the funding from his investments and expected it still within the future.

Q What if anything was said with respect to the Select stock which had been delivered to your bank in May?

A We told him we were going to try to sell it and negotiate it.

Q Did you in fact try to sell it?

A We did.

Q Were you successful in that attempt?

A No, we were not.

Q Has the loan ever been paid?

A No.

MR. SUSSMAN: No further questions on direct examination.

THE COURT: Do you want to examine, Mr. Ehrlich?

MR. SEGAL: Your Honor --

THE COURT: I am doing this to expedite things.

MR. SEGAL: Very well, your Honor.

CROSS EXAMINATION

BY MR. EHRLICH:

MR. EHRLICH: I would like to have this marked.

(Defendant Mullenax Exhibit F was marked for identification.)

Q I represent Dr. Mullenax.

I show you what has been marked as Defendant Mullenax Exhibit F for identification. Can you identify that?

A Yes. This is a liability ledger, or what is commonly known as the schedule of borrowings of the person, Ernest Mullenax, with our bank.

Q It is a document made in the ordinary course of

the business of the bank?

A Yes.

Q And it is the ordinary course of the business of the bank to make such a document?

A Yes.

MR. EHRLICH: I offer the document, your Honor.

MR. SUSSMAN: We have no objection.

THE COURT: It will be received.

(Defendant Mullenax Exhibit F was received in evidence.)

xx Q Mr. Nichols, when was the first loan granted by the Home State National Bank to Dr. Mullenax?

A May 20th, 1968.

Q What was the amount of that loan?

A $22,000.

Q From that period of time to approximately January 1969 were any payments made by Dr. Mullenax on that loan?

A No.

2 Q Does not this ledger sheet reflect credits to the amount of the loan granted to Dr. Mullenax on May 20th, 1968?

A Yes, but these credits are offset by debits

showing increasing amounts. These are renewals of those notes reflecting only a temporary lowering but at the end of the business day. There was no reduction.

Q Do you know what the purpose of that loan was on May 20th, 1968?

A No. I do not.

MR. SUSSMAN: I object. Relevancy, your Honor.

THE COURT: It has been answered.

What is the next question?

Q When did you first assume your position with the Home State National Bank?

A Sir, it is the Home State Bank. It is a State Bank and not a National Bank.

Q I'm sorry.

A February of 1969.

Q So when this original loan was granted you had no position with the bank?

A Right.

Q Do you know who the previous officer at the bank was?

A Yes.

Q What was his name?

A Gary Lafferty.

Q Did you know that he had approved this loan to Dr. Mullenax in 1968?

A yes. The loan was on the bank's books when I took managing officer status in the bank.

Q Do you know Sam Stern?

A Yes, sir.

Q Can you tell us who he is, please?

A He is a District judge.

Q Do you know whether he was a partner with Dr. Mullenax in an oil drilling operation?

MR. SUSSMAN: Objection. Relevance.

THE COURT: Sustained.

MR. EHRLICH: Your Honor, I have an offer of proof.

THE COURT: Sustained.

What is the next question?

Q Were you an officer with the Home State Bank when a $28,000 loan was granted to Dr. Mullenax in February of 1969?

A May I see the ledger, please?

I was an officer of the bank at that time but this amount of loan was not granted to him. This was a renewal of an existing loan with interest.

THE COURT: Let's get it straight once and for

all.

This, then, was the first loan transaction, which was May, 1968?

THE WITNESS: May, 1968, yes.

THE COURT: Then it was successively renewed over a period of time and was outstanding until this period of 1970 that you testified about on your direct examination?

THE WITNESS: Yes, sir, plus increases were made before I came with the bank.

THE COURT: Yes. All right.

Q Mr. Nichols, did you approve that extension of the loan in 1969?

A Yes, I did.

Q Did you ask for any collateral from Dr. Mullenax for that extension of the loan?

A We had securities at that time that were listed on the note. I did not ask for additional, as I recall.

Q Do you know what securities had been pledged by Dr. Mullenax on that outstanding balance due to Home State Bank?

A I can't state specifically. We had shares of a company called Diversified Products, Inc. We had an assignment of his oil interests. We had some other life insurance stock. I can't recall specifically.

Q Since you approved the extension of the loan in the amount of $28,000, do you know the purpose of the extension?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Why did you approve the extension of $28,000?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Did the bank have any records concerning the extension of the $28,000 loan?

THE COURT: You mean other than the ledger?

MR. EHRLICH: Yes, Your Honor.

Q Were any of those records turned over to the United States Attorney's office? Memorandums, reports?

A If we had such.

About memorandums concerning this, those would have the normal credit and debit transactions and would not have been unless asked for. A copy of the "Paid by renewal" would probably not have been. This would have been returned to Mr. Mullenax.

Q I want to understand the procedure the bank follows.

A note indicating that Dr. Mullenax wanted a $28,000 extension of his loan was submitted to you and you

approved it and kept no memorandum or other papers or documents concerning that extension?

A I would guess there would be memoranda concerning this. I can't testify exactly about this. Renewals of notes are pretty common. That is an ordinary practice. Once you have granted the initial credit it is common.

Q Does the bank face the fact that there are people who borrow money who can't make timely payments on their notes?

A Yes.

Q It is not irregular that something like that should happen?

A Not at all.

Q Under those circumstances, did people ask for an extension of time to pay?

A It is commonly called a renewal. It is very common, yes.

Q Even if a person puts up collateral for a note and that collateral should fail, is not the person individually liable for the note?

A Yes.

Q Let me ask you, Mr. Nichols, what was the balance of the note that you state Dr. Mullenax is liable for it today? How much money does he owe the Home State

Bank?

A This liability ledger is an old copy. I can't compute it exactly. The principal balance would be this outstanding amount, which is now $32,793.49, minus a payment of $500 that he remitted to us about a month ago, plus outstanding interest on the unpaid balance for all that period of time.

Q Meaning that Dr. Mullenax still owes the bank money?

A Yes.

Q He is legally liable for the balance of that loan?

A Yes.

Q To the best of your recollection, Mr. Nichols, the Home State Bank loaned Dr. Mullenax $9000 from December of 1968, $7500 in January --

THE COURT: You are not going to go through the loan history. Get down to what direct examination was about and subsequently related thereto.

(Pause.)

Q Drawing your attention, Mr. Nichols, to Mya of 1970, by that time the Home State Bank was pressing Dr. Mullenax for a payment on the outstanding balance; is that not correct?

A Yes.

Q They were writing to dr. Mullenax repeatedly asking him to make a payment?

A Yes.

Q And you were in telephonic communication with him and askiing him to pay something to the bank?

A Yes.

Q Dr. Mullenax had your home number?

A i don't know that he did.

Q Didn't you --

A He could find it through information easily in a town our size. I think he probably got it that night.

Q He called you at home, you testified, on Friday night, May 8, 1970?

A Yes. Whatever the date was, I remember it was a Friday night.

Q When Dr. Mullenax called you and told you that he was having some success, did you have any basis for understanding what he meant?

A Yes.

MR. SUSSMAN: Objection to form, your Honor.

THE COURT: Proceed.

Q Did Dr. Mullenax ever tell you about a Donald Rouse?

A Yes.

Q That Donald Rouse was in the insurance business?

A Yes.

Q Let me ask you, Mr. Nichols, when you have a person who has borrowed a lot of money from the bank do you keep a folder or file on that individual?

A Yes.

Q You check into the individual to see his background, who the bank has loaned money to?

A Fairly closely. We try to do this before we loan them money, not after.

Q As part of that, did you have documentation that Dr. Mullenax held a position with Automotive Performance, Inc. of Texas?

MR. SUSSMAN: Hearsay, your Honor.

THE COURT: Overruled.

A Yes. We know in some capacity.

Q That he held the top distributor crown for the company, and that he was the regional director for that company for between five and seven states in the Midwest?

A Specifically I could not answer. A top position of salesman with them, yes.

Q Was part of the stock that was placed by Dr. Mullenax as collateral for the loans stock in American

Investors Life?

A Yes.

Q Do you know that Dr. Mullenax was an organizer of that company?

A I believe that to be the case.

Q Are you aware that that company presently has three hundred million dollars of insurance in effect?

A No. I am not aware of that.

Q Is it a major midwestern life insurance company?

A I believe it to be. I'm not sure.

Q Have you ever heard, Mr. Nichols, of the American Insurance Digest?

A No, sir.

Q Could it be that you possibly had a copy of that document in your file of Dr. Mullenax?

A It could be. I question it.

Q Permit me to refresh your recollection. Do you know that American Insurance Digest is the oldest insurance publication in the United States?

A Do I know that?

Q Yes.

A No, I do not know that.

Q Do you know that Dr. Mullenax was featured several times in that publication?

A No, I do not know that.

Q Let me ask you. Mr. Nichols, from the information that you had in your bank file concerning Dr. Mullenax, was he considered by the bank to be a potentially top earner?

A At the time the loan was granted, yes.

Q In May of 1970 you knew that Dr. Mullenax, although he was informing you that things looked good, was having difficulty paying the loan; is that not so?

A Yes.

Q He told you that he was expecting some funding, as you testified, is that not so?

A Yes.

Q Was that funding with respect to an insurance company, his association with Donald Rouse?

A With Donald Rouse? Yes.

Q And do you know whether that funding came through?

A No, I do not.

Q But you cannot state that it did come through?

A No.

(Pause.)

THE COURT: Do you have any other questions of this witness?

MR. EHRLICH: Yes. I am straightening something out, your Honor.

Mr. MacDonald and Mr. Sussman do not object to my showing this document to the witness.

THE COURT: Go ahead.

MR. EHRLICH: May I have this marked as Defendant Mullenax Exhibit G.

(Defendant Mullenax Exhibit G was marked for identification.)

Q Mr. Nichols, I show you Defendant Mullenax Exhibit G for identification.

Can you identify it?

A Yes. This is a copy of a telegram from Richard F. Burch & Company to Dr. Ernest Mullenax, April 23rd, 1970.

Q Was this document given to you by Dr. Mullenax?

A Yes.

Q With reference to his anticipation of receiving the funding and being able to repay the loan?

A Yes.

MR. EHRLICH: I offer it in evidence.

THE COURT: It will be received.

(Defendant Mullenax Exhibit G was received in evidence.

Q Referring to Defendant Mullenax Exhibit G in evidence, is that telegram from Burch & Company to Dr. Mullenax dated April 23, 1970?

A Yes.

Q Does it state that Dr. Mullenax could expect funding in approximately one to one and a half weeks?

A Yes.

Q Now when Dr. Mullenax spoke to you with respect to the funding, he stated that once this funding was received he would be able to repay the entire amount of the loan?

A Yes. This is what he stated.

Q When he called you on May 8, 1970, he did not say to you that he could repay the total amount of the loan?

A At that time, no.

Q But the best that he could do was to pay a portion of that outstanding balance?

A Not at that time. He could not pay even a portion.

Q On May 9, 1970, didn't he deposit with the Home State Bank a check in the amount of $1000? You can refer to the ledger.

A Yes, he did.

Q Did he not state he still expected things to go well but he was still having some difficulty with respect to the insurance company?

A Yes.

Q Do you know from your experience in the banking industry that an insurance company needs a charter to operate?

A Yes.

Q Do you know that a particular state may require a certain amount of money before the insurance company can operate?

A Yes.

Q Do you know what the usual amount of that requirement is?

THE COURT: Mr. Ehrlich, I suggest to you that you bear in mind what the direct examination was and not stray too far from the reasonable scope of that on cross-examination.

We are late in the afternoon and I frankly don't think we are interested in a travelogue on the insurance business at the moment.

Q Mr. Nichols, do you know what the pink sheets are?

A Yes.

Q At the time that Dr. Mullenax gave you 10,000 shares of Select stock, did you check the stock in the pink sheets?

A No, I did not. We tried to have it checked in the pink sheets.

(Continued on next page.)

Q Was any price quoted from the pink sheets?

A Not that we could determine.

Q Are the pink sheets an acceptable device to ascertain the market value of the security listed in it?

A Normally for that type of security.

Q If a person went to the pink sheets and he saw a price of $12 for Select Industries and then came to the bank and gave you 10,000 shares of Select Industries, he could represent that the value of these 10,000 shares are $12 per share; is that not so?

A Yes.

MR. EHRLICH: Your Honor, I have to ask the Court to indulge me. I have to find two documents.

(Pause.)

MR. EHRLICH: May I have these documents marked for identification.

(Defendant Mullenax's Exhibits H and I were marked for identification.)

MR. SUSSMAN: If those are what I think they are, your Honor, we would be prepared to stipulate as to authenticity, if I could see them.

(Pause.)

THE COURT: What is the delay now, Mr. Ehrlich?

MR. EHRLICH: Mr. Sussman was looking at the

MR. SUSSMAN: We have no objection to them, your Honor.

MR. EHRLICH: I offer them, your Honor.

(Defendant Mullenax's Exhibits H and I were received in evidence.)

xx Q Mr. Nichols, I ask you to look at two pink sheet slips for May 5 and May 6, 1970.

On the May 5, 1970 pink sheet slip, what is the bid for Select Enterprises, Inc. stock?

THE COURT: Has it been received in evidence?

MR. EHRLICH: Yes, your Honor. They stipulated to it.

THE COURT: Then you announce it. Don't take the time of having the witness squint at it.

MR. EHRLICH: May I pass it to the jury?

THE COURT: Yes. You can pass it to the jury.

What is your situation, Mr. NIchols? Is it a great inconvenience for you to return here tomorrow here?

THE WITNESS: I have to be here tonight anyway.

THE COURT: All right. We will take a recess at this time.

The jury is excused for the balance of the afternoon. We will resume tomorrow morning at 10 o'clock.

(Court adjourned.)

(In open court.)

THE COURT: Mr. Ehrlich, I think we were in the midst of your cross-examination.

MR. EHRLICH: Yes, your Honor.

- - -

R I C H A R D D. N I C H O L S, resumed.

CROSS-EXAMINATION (Continuing)

BY MR. EHRLICH:

Q Mr. Nichols, you were the president of the Home State Bank in May of 1970?

A Yes.

Q On May 9, 1970, Dr. Mullenax put up 10,000 shares of Select stock as additional collateral for outstanding loans granted in 1968 and 1969.

A Yes, sir.

Q From May 9, 1970 to about July 1970, you attempted to contact Dr. Mullenax for repayment of the outstanding balance; is that not so?

A Yes.

Q Did you ever succeed in contacting Dr. Mullenax during that period of time?

A In July, as I recall, we were in touch with him.

Q When you contacted Dr. Mullenax you were not discussing the Select stock put up as collateral; you were,

in fact, communicating with him with respect to the payment of the outstanding balance; is that not so?

A That's correct.

Q With respect to Defendant Mullenax Exhibit F, which is the liability ledger sheet for Dr. Mullenax, does the bottom figure reflect the total amount due to the bank at the present time?

A No, it does not.

Q Is there required a further adjustment of $500?

A Yes. A principal reduction. It has occurred since that time.

Q So Dr. Mullenax owes that amount less $500 to the Home State Bank?

A Yes, plus the interest.

Q During that period of time?

A Yes.

Q He is legally obligated to pay that?

A Yes.

THE COURT: What is the dollar amount? Has it been mentioned?

THE WITNESS: $32,493.49 -- excuse me. It would be $32,293.49 plus interest.

MR. EHRLICH: Your Honor, may I pass this

exhibit to the jury?

THE COURT: The clerk will take care of that.

(Pause)

Q Mr. Nichols, I show you Government Exhibits 105, 107, 4-D and 5-A. I ask you this question:

Were these documents handed over by Dr. Mullenax together to you on or about May 9, 1970?

A Yes, they were.

Q Did he say that those documents were received from Jim Joiner?

A He referred to that fact, yes.

Q Those documents consist of 10,000 shares of Select, the assignment from Jim Joiner to Ernest Mullenax, a news release dated March 28, 1970, and a brochure of Select Enterprises.

A Yes.

Q Mr. Nichols, if someone hands a financial statement to a bank and reports 10,000, 20,000, 30,000, or 40,000 shares of an over-the-counter stock, does the bank make an independent investigation of the borrow besides his financial statement?

THE COURT: These theories could be interesting, but the important thing is, what does the bank do? I'm not going to go into what the bank's practice is.

I want to find out what the bank did, if anything.

Q Is it the custom of the bank to make --

THE COURT: You mean at this time in 1970 was it. Isn't that right?

MR. EHRLICH: Yes, your Honor.

Q At or about May 1970, Mr. Nichols, was it the custom of the bank to make an independent investigation of a borrow besides a financial statement submitted by him?

A If we felt the circumstance warranted it, yes.

Q If a borrow submitted a financial statement which was uncertified, unaudited, would that be the custom of the bank?

MR. SUSSMAN: Objected to, your Honor.

THE COURT: Sustained.

Q The shares of American Investors Life and Modern American Life reflected on Defendant Mullenax's Exhibit F, was that originally pledged as collateral by Dr. Mullenax for the loan?

MR. SUSSMAN: Objection, your Honor.

THE COURT: We will let him ask this one question. Was that part of the collateral at the inception of the loan?

THE WITNESS: As I recall, it was. This was prior

to my time. I believe that to be the case.

Q Was it the practice at or about May 1970 for the Home State Bank to grant loans which were not collateralized?

MR. SUSSMAN: That is objected to, your Honor.

THE COURT: Sustained.

Q Mr. Nichols, going back to the period May 9, 1970 to the time you spoke with Dr. Mullenax, sometime in July of 1970, when you eventually spoke with him, did you feel that Dr. Mullenax was embarrassed about not paying the balance of the loan?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

MR. EHRLICH: Your Honor, may I hand this to the Court.

(Pause)

(Court Exhibit 15 marked.)

THE COURT: With respect to the communication marked as Court Exhibit 15, the applications contained therein are denied. I see no basis on which to compel the turnover that you request since it is not 3500 material. On the other hand, there is no reason why by appropriate process you can't obtain anything that you think is relevant, regardless of whether it is 3500

material. The courtroom is not the place to engage in that kind of pyrotechnics.

MR. EHRLICH: I have no further questions, your Honor.

THE COURT: Pass the communication to the government, please.

(Pause)

MR. EHRLICH: I discussed the matter with Mr. Sussman this morning.

Your Honor, I have no further questions.

MR. LESSER: No questions, your Honor.

MR. RHODES: No questions, your Honor.

MR. BERGER: No questions, your Honor.

MR. DULSKY: No questions, your Honor.

MR. CONCANNON: No questions, your Honor.

MR. ROONEY: No questions, your Honor.

MR. BRODERICK: No questions, your Honor.

MR. RICHMAN: I have one question, your Honor.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q Mr. Nichols, my name Bill Richman. I represent Emerson Titlow of Reno, Nevada. Do you know him?

A No, sir, I do not.

Q Yesterday, Mr. MacDonald showed you Government Exhibit 105. I think it was a stock certificate for 10,000 shares. I will ask you one question with reference to that:

You mentioned something about a transfer agent yesterday. Do you recall that?

A Yes, I do.

Q What was the name of that transfer agent, Mr. Nichols?

A The name of the transfer agent was written on the back of one of these documents and it is, or was, the Rocky Mountain Securities Transfer Company, Inc.

Q Where are they located?

A In Albuquerque, New Mexico.

Q What date does that document reflect, if it reflects a date at all?

A The date reflected would be the date that he turned the stock over to us, which would be May 9 or 10, 1970.

MR. RICHMAN: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. SEGAL:

Q Mr. Nichols, I believe you testified that on the

morning, Saturday morning, in which the shares were brought to the bank, Mr. Dick Jones, your legal counsel, was there.

A Yes, sir.

Q Was Mr. Jones a part of the conversation that you were holding with Mr. Goodloe in regard to the stock?

A It was Mr. Mullenax and not Mr. Goodloe.

He was involved. There were three persons in the room.

Q He heard the offer of the extra collateral of Select in connection with the loan that he had with your bank?

A The offer was made the night before on the telephone. He witnessed the transfer and the giving of it and the reason for it, yes.

Q Did Mr. Jones advise you at that time if there was anything improper about the bank accepting the stock of Select as collateral for Mr. Mullenax's loan?

A No. He did not.

MR. SEGAL: I have no further questions, your Honor.

THE COURT: Is there any redirect examination?

MR. SUSSMAN: No redirect examination.

THE COURT: Thank you. You are excused for all

pgas

purposes.

(Witness excused.)

MR. SUSSMAN: Your Honor, I believe I am authorized to state that it is stipulated that if the custodian of the records of the Southwestern Bell Telephone Company were called as a witness, that person would testify that Exhibits 264 and 265, previously marked for identification, are copies of official records of that telephone company maintained by it in the regular course of its business.

Subject to that stipulation we offer Exhibits 264 and 265.

(Pause)

MR. SUSSMAN: If time is going to pass examining those documents, may we proceed with the next witness?

THE COURT: It won't take very long.

MR. SEGAL: With regard to Exhibit 265, there has been some pencil notations which I do not believe was part of the telephone record. I would ask that those be redacted. My objection would be on the basis of relevancy, aside from that objection.

THE COURT: The pencil marking may go out and the document is received under the stipulation.

MR. SEGAL: With regard to Exhibit 265, your

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AFTERNOON SESSION

(Time noted: 2:00 p.m.)

(Jury in box.)

- - -

P A U L M A N N, called as a witness by the government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SUSSMAN:

Q Mr. Mann, I am going to try to speak nice and clearly. If there comes a time when you cannot hear me, raise your hand so we can note that.

A Talk loud.

Q Did there come a time when --

THE COURT: Stand next to Mr. MacDonald. Move the lectern there, Mr. Sussman.

(Court Exhibit 25 marked.)

Q Can you hear me better here?

A Yes.

Q Tell the jury, please, how old you are, where you live, and what you do for a living.

A I am fifty-nine years old. I live on a farm near Wichita, Kansas. I am a farmer, banker, life insurance man.

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Q What if any relationship do you have to an organization called Town and Country Business Trust?

A I am a trustee.

Q Directing your attention to the year 1970, did you have any relationship to that trust at that time?

A Yes, sir.

Q What was that relationship?

A A trustee.

Q Did you have occasion in the year 1970 to meet with a man called Ernest Mullenax in connection with your being a trustee of Town and Country Business Trust?

A Yes, sir.

Q Do you see Mr. Mullenax in the courtroom?

A I believe that's him over there (indicating).

Q Describe what he is wearing.

A Horned-rim glasses and white shirt and brown tie, and it looks like a brown suit.

MR. SUSSMAN: May the record reflect the correct identification.

THE COURT: Yes.

Q Directing your attention to the middle of 1970, did you have occasion at that time to meet with Mr. Mullenax and, if so, tell us where that meeting occurred, who was there.

A It was about the middle of 1970. It was at the Augusta State Bank, Augusta, Kansas, which is about twenty miles east of Wichita, Kansas, and Mrs. Ellen Lee came in with him.

Q Was there any conversation on that occasion?

A Yes, sir.

Q Tell the jury, please, what that conversation was.

A Mr. Mullenax wanted to borrow some money and talked about an amount, $25,000. We agreed, finally, to make him the loan.

Q Did Mr. Mullenax provide you with any writing on that occasion, any piece of written material?

A Yes, sir. Financial statement.

Q Look at Government Exhibit 109ffor identification in the pile in front of you and tell us if you can identify that document.

A Yes, sir.

Q What is the document?

A It is the personal financial statement of Ernest R. Mullenax.

Q Is that the financial statement that you were just referring to?

A Yes, sir.

pgas7 Mann - direct

Q You'll see a date on that financial statement. Was that date on it at the time you received it?

A Yes, sir.

Q You will see some X markings on the left-hand side of that financial statement. Do you know how those got there?

A Yes, sir. I put them on there.

Q Was that done in Mr. Mullenax's presence?

A Yes, sir.

Q Does the financial statement refer to Select Enterprises?

A (Pause) No. I don't see Select Enterprises -- Yes. It is the third one.

MR. SUSSMAN: We offer the exhibit.

MR. EHRLICH: May I examine it, your Honor?

THE COURT: Yes.

(Pause)

MR. EHRLICH: Your Honor, my primary objection is my note (handing).

THE COURT: This is to be marked as Court Exhibit 26.

*** (Court Exhibit 26 marked.)

THE COURT: The objection is overruled.

MR. EHRLICH: One question on the voir dire,

your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Mr. Mann, these markings in pen on the right-hand side of the financial statement, was that done by you?

A I don't remember. I remember these but not that.

THE COURT: Do you remember these, the ones on the left?

THE WITNESS: I remember the ones on the left, the X's.

THE COURT: I don't see any markings on the right-hand side.

MR. EHRLICH: Right here (indicating).

THE COURT: The underlined? We will redact the underlined. The underlining is under a dollar figure for Select Enterprises, Inc. I think that white material that you have can erase that. We will redact it accordingly.

MR. EHRLICH: May I send up another note?

THE COURT: Surely. You can send up a note any time you want to. You don't need my permission.

(Pause)

THE COURT: I have rubbed out a little too much

so I am restoring the figure I rubbed out by pencil. It is understood that it is only to put what was there in typewriting first.

Your point is noted, Mr. Ehrlich.

*** (Court Exhibit 27 marked.)

THE COURT: That is received.

*** (Government Exhibit 109 received in evidence.)

BY MR. SUSSMAN:

Q What if any conversation did you have with Mr. Mullenax concerning Select Enterprise on that occasion, Mr. Mann?

A It was part of the security that I took for the $25,000 loan.

Q What if anything did Mr. Mullenax say to you concerning the company Select Enterprises or its stock?

A I asked about what business they were engaged in and, as I recall, it was real estate and mining.

Q Was there any other conversation that you can recall concerning the stock of Select Enterprises?

A No.

Q You mentioned a loan. Would you tell us, please, what if any conversation there was concerning your loan?

A We decided on a $25,000 loan and took as collateral some Pig and Whistle stock and some Select

Enterprises stock.

Q Directing your attention to Government Exhibits 115, 110, 111, and 112 in the pile before you, can you identify those exhibits?

A Exhibit 110, yes. That's a stock certificate, No. 1938, Select Enterprises, for 10,000 shares made out to J. J. Joiner.

Q What if any relationship does that stock certificate have to the loan you have been talking about?

A We took a portion of that stock as collateral on the $25,000 loan.

Q Would you also tell us about Exhibits 111, 112, and 115.

A Exhibit 111 is a stock assignment from J. J. Joiner to Ernest R. Mullenax for 10,000 shares of a capital stock of Select Enterprises.

Q What if any relationship does that have, to your knowledge, to Exhibit 110?

A It represents stock certificate number 1938.

Q The same certificate?

A Yes, sir.

Q What about Exhibit 112? Tell us briefly what that is.

A At the time we made the loan we took 2,000

shares of the Select Enterprises stock represented as part of stock certificate 1938.

Q This Exhibit 112 is Mr. Mullenax's stock power with respect to that; is that right?

A Signed by Ernest R. Mullenax in the presence of Alan M. Lee.

Q Let's look at 115. Tell us, please, what that is.

A 115?

Q Yes, sir.

A A collateral note.

Q Is that the loan you were talking about?

A $25,000, yes.

Q Was that signed in your presence by Mr. Mullenax?

A Yes.

MR. SUSSMAN: The government offers the four exhibits identified as 110, 111, 112, 115.

MR. EHRLICH: No objection, your Honor.

THE COURT: They will be received.

(Government Exhibits 110, 111, 112, 115 received in evidence.)

Q Mr. Mann, did you have occasion to do any computations in connection with the granting of this loan to Mr. Mullenax?

A Yes.

Q Would you please look at Government Exhibit 117 and tell the jury if you can identify those documents.

A Memorandum dated July 1, 1970.

Q Was that prepared by you at that time?

A Yes, sir.

Q Look at the first and last pages of the exhibit and tell us what if any relationship they have to your computations concerning this loan.

A It shows six months interest.

Q Are they the computations you mad at that time?

A Yes, sir.

MR. SUSSMAN: We offer them, your Honor, to the extent of the first and last pages.

MR. EHRLICH: May I see the exhibit, please?

THE COURT: Yes.

MR. EHRLICH: May I voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q I direct your attention to the last page.

bs2 Mann - direct

I note two different forms of handwriting. Is all the material contained on the last page written by you with regard to the transaction that you have testified to?

A No, sir. This is my handwriting (indicating). The date. I was just going to tell you --

Q Is a portion of that document not your own handwriting?

A Right.

BY MR. SUSSMAN:

Q Whose handwriting is it?

A I don't know.

MR. EHRLICH: Your Honor, I have no objection to the first --

MR. SUSSMAN: We will withdraw the offer of the exhibit.

Q Directing your attention to Government Exhibit 113 before you, can you tell us what that exhibit is?

A A letter addressed to Town & Country Business Trust, dated July 1, 1 970, signed by Ernest R. Mullenax, in which he states --

Q Don't tell us what it says in there. It is not in evidence yet.

Is that letter written in connection with the loan we have been talking about?

A Yes, sir.

MR. SUSSMAN: We offer the exhibit.

MR. EHRLICH: No objecion.

THE COURT: Received.

MR. EHRLICH: No objection.

THE COURT: Received.

(Government's Exhibit 113 was received in evidence.)

Q Directing your attention to Exhibit 114, Mr. Mann, can you identify that document as a document bearing a relationship to the loan we have been talking about?

A Yes. Regulation U.

Q Was this document provided to your trust in connection with that loan by Mr. Mullenax?

A Yes, sir.

MR. SUSSMAN: We offer the exhibit, your Honor.

MR. EHRLICH: Your Honor, I object to this document on the same grounds as noted on Court's Exhibit No. 9, where the Court made reference to Government Exhibit 114 for identification.

THE COURT: Overruled.

MR. EHRLICH: May I point out to the Court certain material contained on the reverse side of the document and ask that that be stricken from the document.

MR. SUSSMAN: I would point out to your Honor that this is a standard printed form.

THE COURT: It is a printed form, form, isn't it? Are you talking about the print on the form?

MR. EHRLICH: Yes, your Honor. However, I point out it may clash with the Court's eventual function.

THE COURT: This is signed by Mr. Mullenax, is it not?

THE WITNESS: Yes, sir.

THE COURT: Received.

(Government's Exhibit 114 was received in evidence.)

xx Q Directing your attention to Exhibit 116, those two yellow pieces of paper there, can you tell the jury what if any relationship they have to the loan that you have been describing?

A Two checks, part of the loan proceeds.

Q These are drawn to the order of Mr. Mullenax, is that right?

A Correct.

Q Do you recognizethe signatures on those checks on behalf of Town & Country Trust?

A The signature of mine is on one check but I recognize the signatures on the other checks.

MR. SUSSMAN: We offer the exhibits and, with respect to the check bearing No. 367, refer as well to the testimony yesterday identifying a stamp on the back of that check.

MR. EHRLICH: No objection.

THE COURT: Received.

(Government's Exhibit 116 was received in evidence.)

Q Directing your attention to Exhibit 118 in front of you, can you identify that document?

A Yes. It was the letter that I had written to Mr. Mullenax.

Q In connection with that loan?

A Yes.

MR. SUSSMAN: We offer the exhibit.

MR. EHRLICH: No objection.

(Government's Exhibit 118 was received in evidence.)

Q Mr. Mann, did there come a time after the loan when you communicated to Mr. Mullenax with respect to the security for that loan?

A I don't get your question.

THE COURT: Did you send any communication to him in respect to the loan after the loan was made?

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THE WITNESS: Yes. We endeavored to collect the loan.

Q Would you look at Exhibit 119 and see whether it refreshes your recollection?

MR. EHRLICH: Objection.

THE COURT: Objection to what?

MR. EHRLICH: I don't believe the witness has testified that he needs refreshing.

THE COURT: Overruled.

Is that your letter?

THE WITNESS: Yes.

Q Without reading from that letter, Mr. Mann, is that a letter which you wrote to Mr. Mullenax with respect to the security for the loan that you have been describing?

A Yes, on October 2, 1970.

MR. SUSSMAN: We offer the letter, your Honor.

MR. EHRLICH: No objection.

THE COURT: Received.

(Government's Exhibit 119 was received in evidence.)

xx Q Mr. Mann, directing your attention to the third paragraph of Exhibit 119 and in particular to the last sentence of that paragraph, did there ever come a time when the transaction adverted to in that sentence took

place?

A Namely, taking the other 8000 shares of --

Q Yes, sir.

A Yes.

Q Has the loan that your trust made to Mr. Mullenax ever been paid?

A No.

MR. SUSSMAN: No further questions on direct.

CROSS-EXAMINATION

BY MR. SEGAL:

Q Was the Select stock which was used as collateral on that loan ever sold by the bank?

A No.

MR. SEGAL: No further questions, your Honor.

THE COURT: Is there any other lawyer for any defendant who wishes to cross-examine?

MR. EHRLICH: Yes, your Honor.

THE COURT: I have been requested to give the jury interim advice and I don't think that is necessary or called for at this time.

(Court's Exhibit 28 marked.)

CROSS-EXAMINATION

BY MR. EHRLICH:

Q Your Honor, I don't want to look over Mr.

MacDonald's shoulder, so is it all right if I move this back?

THE COURT: The problem is one of hearing. You can move that there and just raise your voice.

Q Mr. Mann, can you hear me?

A Yes, if you will talk up.

Q Very good. I represent Dr. Mullenax.

You testified that a Mrs. Helen Lee brought Dr. Mullenax to the Town & Country Trust. Is that so?

A That she --

Q Did she introduce Dr. Mullenax to the Town & Country Trust?

A Yes.

Q Is Mrs. Helen Lee the wife of Dr. Rex Lee?

A Yes.

Q Is he a prominent surgeon in Kansas?

A Yes.

Q Is he also a member of the board of directors of the Town & Country Trust, was he in mid-1970?

A Yes.

Q Does he still hold that position?

A Yes.

Q Did Dr. Lee and his wife introduce Dr. Mullenax to the Town & Country Trust with reference to this $25,000

loan?

A Yes. Mrs. Lee.

Q Mrs. Lee?

A Mrs. Lee.

MR. EHRLICH: Your Honor, may I read Government's Exhibit 118 to the jury?

THE COURT: I think the jury has 118 right now. You don't have to read it to them.

If you think that it needs some emphasis, go ahead and read it.

MR. EHRLICH: Thank you.

(Mr. Ehrlich read to the jury from Government Exhibit 118 in evidence.)

Q Mr. Mann, when Mrs. Helen Lee introduced Dr. Mullenax to the Town & Country Trust, did she have certain recommendations that she made in his behalf? Did she tell you anything about Dr. Mullenax's background?

MR. SUSSMAN: I will object to that.

THE COURT: The witness can answer it.

THE WITNESS: Would you read the question?

THE COURT: Did she tell you anything about his background?

THE WITNESS: Said that he was -- had been in the life insurance business and some other business deals

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and they thought well of him.

Q She told you that he was successful in the insurance business?

MR. SUSSMAN: Objection. Leading.

THE COURT: Did she tell you that?

Q With reference to your letter of July 8, 1970, which I just read to the jury, had you anticipated having future business dealings with Dr. Mullenax?

A We are also in the insurance business, and we are always hunting good salesmen.

Q I point out this particular statement:

"She was laughing and said that it didn't look like you got much out of the $25,000 but you will probably make a couple of million on this $25,000. Anyway, I hope so."

Was this reference to the remarks that she had said about Dr. Mullenax's being a very successful individual?

A I don't remember, now. It's been five years ago.

Q What did you mean by this particular statement? I point to the last sentence.

A Apparently that is what she said to me. I don't remember.

Q She thought very highly of Dr. Mullenax?

A I think so.

Q And, Dr. Lee?

A You mean she thought well of her husband?

Q No. Do you know that Dr. Lee was Dr. Mullenax's personal physician?

MR. SUSSMAN: Objection.

A No, I didn't.

Q Did Dr. Lee ever express any opinion about Dr. Mullenax?

A Yes, at the time.

Q Could you tell us what that opinion was?

A That he was all right.

Q Getting that type of recommendation from a member of the board of directors of the Town & Country Trust and his wife, did that have any influence in your decision to grant Dr. Mullenax the $25,000 loan?

A Yes.

Q Did you know that both Dr. Lee and Helen Lee were active in building the American Investors Life Insurance Company?

MR. SUSSMAN: Objection.

THE COURT: I will take it subject to some connection to this case.

MR. EHRLICH: Yes, your Honor.

THE COURT: Did you know that?

THE WITNESS: I know that Dr. Lee used to be a director. I don't know whether he is any more or not.

Do you know that Helen Lee worked under Dr. Mullenax in Automotive Performance, Incorporated?

A No.

Q She never told you that?

A No.

Q I show you Government's Exhibit 112. Could you tell me what securities and in what amount were pledged by Dr. Mullenax with reference to the $25,000 loan?

A 40,000 shares of Pig 'n Whistle Holding Corporation stock and 2000 shares of Select Enterprise stock.

Q When you accepted these securities with the reference to this grant of the loan, Mr. Mann, did the 40,000 shares of Pig 'n Whistle adequately cover the grant of the $25,000 loan?

A Yes, it did.

Q What was the value of that security at the time, in mid-1970, when the loan was granted by the bank?

THE COURT: Are you asking about value or selling price?

MR. EHRLICH: Value of the security.

THE COURT: Do you know anything at all about

the value of that company?

THE WITNESS: As I recall, it was around --

THE COURT: The value of the company or the value of the stock?

THE WITNESS: The value of the stock. Is that what you want?

THE COURT: The value of the stock.

THE WITNESS: Yes.

Q Yes, the value of the stock, Mr. Mann?

A As I recall, it was worth around a dollar and a half to two dollars.

Q So, in granting the loan you were primarily relying on the 40,000 shares of Pig 'n Whistle?

A Right.

MR. EHRLICH: No further questions, your Honor.

THE COURT: Does any other defendant's lawyer wish to examine? Is there any redirect examination?

MR. SUSSMAN: No redirect, your Honor.

THE COURT: Thank you very much.

You are excused.

(Witness excused.)

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B I L L C O L L I N S , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUSSMAN:

Q Mr. Collins, will you tell the jury how old you are, where you live and what you do for a living?

A I am 45 years of age. I live in Huntsville, Alabama. I am a banker.

Q What bank is it that you are connected with?

A Central Bank of Alabama.

Q Directing your attention to the year 1970 and, in particular, to the month of May in that year would you tell the jury where you lived and what you did at that time?

A I lived in Decatur, Alabama; worked for a bank which was then known as State National Bank.

Q What if any relationship is there between State National Bank and Central Bank of Alabama?

A It is the same bank. It is simply a name change.

Q Directing your attention to May 8, 1970, did you have occasion on that day to meet with Ernest Mullenax in connection with your position with State National Bank?

A I did.

Q Do you see Mr. Mullenax in the courtroom?

A Yes, I do.

Q Would you point him out, please?

A The gentleman sitting on the back, back there.

Q Tell us what he is wearing?

A Got on a brown looking suit, looks to me like from here, and horn-rimmed glasses.

MR. SUSSMAN: May the record reflect a correct identification?

THE COURT: Yes.

Q Would you tell us where you met Mr. Mullenax on that day, who was present and what if anything was said?

A We were in my office at the bank. Myself, Mr. Mullenax and Mr. Donald Rouse were there.

What was said was discussion of a credit that he was requesting from the bank.

Q Who was "he"?

A Mr. Mullenax.

Q What if anything else was said?

A He was requesting a credit of some $60,000.

Q Who is this "he" that you are referring to?

A Mr. Mullenax was -- from the bank, and furnished

jbs3 Collins - direct

me with some documents that would help us in appraising the credit, financial statements on himself and some documents on the company that he was offering stock in as collateral on the loan.

Q Would you look at Exhibit 3-J, 4-E, 5, 120 and 121 and tell the jury whether you can identify any of those documents?

A Yes, sir.

Q If you can identify any document, will you refer to it by the number on it, please?

A The first one I am looking at is 3-J.

Q Can you identify that, please?

A This is a document in connection with Select Enterprises. It is a financial statement on that company.

Q Where did you see it before, if anywhere?

A I saw it in my office on that day in May, the 8th, 1970.

Q Is that one of the documents that Mr. Mullenax gave you?

A Yes, it is.

Q Can you identify any of the other documents

A 4-E is another document pertaining to the Select Enterprises. It is a news release, that document.

Q Did you get that from Mr. Mullenax on that occasion, as well?

A I did.

MR. EHRLICH: I object to the leading, your Honor.

THE COURT: Overruled.

Q Can you identify any other document?

A Document 5 is a brochure, pamphlet on Select Enterprises that was given to me on that date of May 8.

Q By whom?

A By Mr. Mullenax.

The next one is 121. This is a little card with several brokerage firms listed, individuals that were stated to be making a market in Select stock.

Q Who made that statement to you?

A Mr. Mullenax.

There are some other documents with it, one of which is a little memo on some of our interoffice memo material on who is transfer agent for the stock.

Q What was the source of the information that appears on that exhibit?

A On the transfer part?

Q Yes.

A That information was secured some times after

May 8th by our office staff.

Q From who mwas it secured, if you know?

A I cannot tell you exactly from whom I secured this. We made several contacts trying to locate the right parties, the transfer agent.

Q You have one other document in your hand. Can you identify that?

A There is a couple of calling cards, one of which is Continental General Corporation. That shows Mr. Mullenax --

MR. EHRLICH: Objection to the description, your Honor.

THE COURT: It is a calling card of Continental General Corporation. For the present, that's enough.

Q With reference to these cards which are stapled together in Exhibit 121, Mr. Collins, can you tell us from whom you got them and when?

A I got all of them from Mr. Mullenax with the possible exception of the one that is on my interoffice note that gives the name of the transfer agent.

Q Finally, with respect to Exhibit 120, can you identify that?

A 120 is a financial statement on Mr. Mullenax.

Q Where did you get that from?

A I got that from him.

MR.SUSSMAN: Your Honor, the Government offers -

THE COURT: Wait a minute.

Whose handwriting is down at the bottom of 120?

THE WITNESS: Mr. Mullenax signed this financial statement and the handwriting of the bank listed there, I do not know who wrote that on there. It is not mine.

THE COURT: Who is Mr. Riffe?

THE WITNESS: Mr. Riffe was the vice-president of the Union National Bank in Wichita, Kansas, who was given to us as a reference on Mr. Mullenax.

THE COURT: By whom?

THE WITNESS: By Mr. Mullenax.

THE COURT: There is some handwriting up at the top right-hand side of that exhibit that appears to be possibly a telephone number.

Do you know who put that on there?

THE WITNESS: No, sir, I do not.

THE COURT: There is a notation with a date stamp on it. What is that?

THE WITNESS: That is the date that this financial statement was actually received and recorded into our credit department at the bank.

THE COURT: That is a credit department notation?

THE WITNESS: Yes.

THE COURT: Made in the regular course of its business?

THE WITNESS Regular course of business, yes, sir.

MR. SUSSMAN: The offer, your Honor, is with respect to Exhibits 3-J, 4-E, 5, 121, excluding the memorandum about the transfer, and 120.

THE COURT: Exhibit 5 was received on October 3, so it need not be reoffered again.

There being no objection to the remaining --

MR. EHRLICH: Your Honor, may I examine on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q With respect to Government Exhibit 121 marked for identification, can you identify the handwriting contained on this card?

A I can, part of it.

Q Which part, please?

A The part that is below this line (indicating).

Q Who does that belong to?

A I believe that is my writing.

Q And the writing above the line?

A That is not my writing and I do not know who put it on there. It was on there at the time it was given to me.

THE COURT: Given to you by whom?

THE WITNESS: By Mr. Mullenax.

Q Did Dr. Mullenax give you these documents at one time as a package?

A I believe that the first three documents, 3-J, 4-E and 5 were all given to me at one time on the morning of May 8.

Exhibit 121, which is the card you are referring to, was given to me later that same day.

Q And 120?

A 120, I am sorry, was given in the morning along with the first documents.

Q When 3-J, 4-E and 5 were given to you, were there any additional documents -- along with 120 -- were there any additional documents?

A None that I recall.

Q When Exhibit 121 was given to you later in the day on May 8, were there any other documents with that?

A I recall us looking at some other documents. I do not recall that they were left in my possession at that time.

MR. EHRLICH: Your Honor, I would object to Exhibit 121 to the extent of any handwriting.

THE COURT: Objection overruled. Received.

Exhibit 3-J, 4-E, 4-G, 120 and 121 are received.

MR. EHRLICH: Your Honor, would you mind if I have the court reporter read that back, because it differs from the exhibits --

THE COURT: Read what back?

MR. EHRLICH: That statement.

THE COURT: My statement?

MR. EHRLICH: Yes.

THE COURT: I understood that 3-J, 4-G, 5, 120 and 121 were mentioned by the witness. Am I incorrect about that, Mr. Sussman?

MR. SUSSMAN: I did not offer 4-G at this time. I would like to read a portion of Exhibit 121 to the jury.

THE COURT: Let's get the record correct as to what has been offered. Start again and give the numbers to the clerk.

The objection about the handwriting which was on the slip, Exhibit 121, has been overruled and that is being taken as a whole.

Just read the numbers before we get to anything else.

MR. EHRLICH: Do I understand correctly that the memorandum portion of Exhibit 121 is being withdrawn by the Government?

THE COURT: You don't understand that at all. Just wait until the Government announces what it is doing.

Go ahead.

MR. SUSSMAN: 3-J, 4-E, 120 are offered, and I understand that they have been received.

121 is offered to the extent of the last three of the four pieces of paper which comprise that exhibit and not to the extent of the memorandum which is the first page of that exhibit.

I will physically remove that memorandum from the exhibit at this time.

THE COURT: All right. That resolves the question.

MR. SUSSMAN: I would now like to read to the jury.

MR. EHRLICH: Your Honor, I am sorry. I do have

two additional questions on the voir dire.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Again with respect to Government Exhibit 121, on the last card on the exhibit do you know whose handwriting that is?

A I believe it is possibly mine, particularly the numbers.

Q Was this information supplied to you by Dr. Mullenax?

A That I cannot answer. I don't know whether he gave me this number or not.

Q When Dr. Mullenax gave you this card, did this information appear on it, the handwritten material?

A He gave me that card.

Q But was this handwritten material on the card?

A No. This is my handwriting here, and it was put on after I received the card.

MR. EHRLICH: Your Honor, I ask that this card be redacted to that extent, to remove the handwritten portions.

MR. SUSSMAN: May I examine before that is done, your Honor?

THE COURT: Now, everybody is all mixed up. You got a card from Dr. Mullenax?

THE WITNESS: Yes.

THE COURT: At the time that you got the card, what if anything was on there in addition to the print?

THE WITNESS: I don't believe anything in addition to the print was on it at the time it was given to me.

THE COURT: Did you get any information from Dr. Mullenax which caused you to write anything on this card?

THE WITNESS: I would -- it's pretty hard to recall that but I would say that that number, I believe, was given to me by Dr. Mullenax.

THE COURT: How about the name?

THE WITNESS: The name I do not recall, sir. This name I would (indicating). I think this was the first name of an individual who appeared on one of the stock certificates.

THE COURT: And you put that down?

THE WITNESS: Yes, sir.

THE COURT: Getting that from whom?

THE WITNESS: Getting the information from Mr. Mullenax.

THE COURT: So that you identify the telephone

number and the first name?

THE WITNESS: That is definitely my writing. This I am not sure is, whose writing (indicating).

THE COURT: Do you recall any discussion of that name at that time, the name in handwriting?

THE WITNESS: I do not.

MR. SUSSMAN: We would consent to redact this card to the extent of eliminating the name which Mr. Collins is unable to identify the source of, your Honor.

THE COURT: All right.

MR. EHRLICH: Which name?

MR. SUSSMAN: This name here (pointing).

THE COURT: Does that cure it?

MR. EHRLICH: No, your Honor.

THE COURT: Why not?

MR. EHRLICH: Because -- I'll ask him questions.

FURTHER VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q This top number, can you say with reasonable certainty --

THE COURT: Don't shake your pen at him.

MR. EHRLICH: Sorry.

Q Can you say with reasonable certainty that that

name and that number was given to you by Dr. Mullenax?

A I can say that with reasonable certainty.

Q Can you say with reasonable certainty that that name and telephone number was not given to you by Mr. Rouse or any other source of information?

A I believe that name was given to me by Mr. Mullenax.

MR. EHRLICH: Your Honor, I must point out on the record that his present statement is in conflict with his original answers to my questions when I presented --

THE COUPT: Do you have any other objections?

MR. EHRLICH: No, your Honor.

THE COURT: Overruled.

Received without the family name that is on there.

MR. SUSSMAN: With your Honor's permission I will redact that right now.

MR. RICHMAN: May I look at it?

THE COURT: May I suggest that what you do is redact a Xerox instead of mutilating the original card?

MR. SUSSMAN: Certainly, your Honor.

(Pause.)

MR. SUSSMAN: Let me show the exhibit, as

redacted, to Mr. Ehrlich, your Honor.

THE COURT: That is now consistent with the Court's ruling, is it not?

MR. EHRLICH: Yes, your Honor.

THE COURT: Any further questions?

MR. SUSSMAN: Yes, sir.

There is one portion of that I want to read to the jury and then I will go back and finish the rest of the questions.

THE COURT: Read it from the original.

(Government's Exhibits 3-J, 4-E, 120 and 121 were received in evidence.)

(Mr. Sussman read to the jury from Government Exhibit 121.)

MR. EHRLICH: Your Honor, I think Mr. Sussman should point out that Mr. Collins stated that he wrote the bottom line on that card.

THE COURT: The jury has been told that twice now.

BY MR. SUSSMAN:

Q What if anything happened after receipt from Dr. Mullenax of the documents we have been talking about?

A We proceeding with making our credit decision

on the loan by checking Select out through a brokerage firm that was located in our bank building in Decatur.

Q Did there come a time later that day when you again met with Mr. Mullenax?

A I did.

Q Would you tell us who was present on that occasion and what if anything took place?

A Mr. Mullenax, Mr. Rouse and myself were present again and at that time we discussed what I had worked up on the credit and it was suggested to me to call Crown Security --

MR. EHRLICH: Objection, your Honor.

THE COURT: Yes. Under the rules you cannot mention the content of that conversation.

Q Who suggested it, M.r Collins?

A Mr. Mullenax.

MR. EHRLICH: Objection.

THE COURT: What is the objection?

MR. EHRLICH: To the characterization.

THE COURT: Overruled.

Q Would you tell us, please, what the conversation was?

A With Crown?

Q No, sir. With Mr. Mullenax, first, and we

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will come to Crown.

A I discussed with Mr. Mullenax that we had checked the stock out through the brokerage firm in our building, that it had been told to me that there was a market in it --

MR. SEGAL: Objection.

B3 pm THE COURT: Overruled. This is a conversation. You and Mr. Mullenax had this conversation?

THE WITNESS: Yes.

A (Continuing) -- showing that it was trading in the area of $12. I still wanted further information on it and it was at this particular time that I called Crown Security. I checked it out with them.

Q Would you look at Exhibit 124, please, and tell us if you can identify that document?

A Yes, sir.

Q What is that, sir?

A This is a telephone bill to our bank number in Decatur, Alabama.

MR. SUSSMAN: Your Honor, the Government offers Exhibit 124 and refers to the indicated matter on the first page.

THE COURT: What you are offering is a particular item of that exhibit, isn't that so?

MR. SUSSMAN: Yes, sir.

THE COURT: Would it be appropriate, if there is no objection, just to read that item into the record as an item that appears on the bank's telephone bill, rather than have the whole exhibit go in?

MR. SUSSMAN: Certainly, your Honor. We would have no problem with that.

Appearing on the telephone bill of Mr. Collins' bank is the following item --

MR. EHRLICH: Excuse me, your Honor. Has this been received?

THE COURT: He is offering that entry in evidence.

MR. EHRLICH: I would like to have a question on voir dire, please.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Mr. Collins, did you place --

THE COURT: This is a record of a telephone call on the bank's statement.

MR. EHRLICH: Yes, your Honor.

THE COURT: That is as far as we have gone.

Go ahead and ask the question.

Q Mr. Collins, id you place this particular call?

A Either I or my secretary placed it.

MR. EHRLICH: I have no objection, your Honor.

BY MR. SUSSMAN:

Q Appearing on Mr. Collins' bank's phone bill is the following entry for May 8, 1970:

New York, New York 212-349-7210, AD 105.

What if anything happened after you made that phone call, Mr. Collins?

MR. EHRLICH: Objection, your Honor. He didn't state he made the call.

THE COURT: Did you speak on that call?

THE WITNESS: Yes, sir, I did.

THE COURT: What happened thereafter?

THE WITNESS: I identified myself on the call and talked to a Mr. John Wells.

Q Would you tell us, please, what the conversation was?

A I told him that we had been offered some Select stock as collateral on the loan; I wanted to verify the trading in it, the price range. I was told that there was some trading in the stock, and the price range was $12.

We discussed whether or not a large block of

stock would affect the market, whether it was stock that could be sold in large quantities or not.

I was told that most likely it could not be; that it would probably have to be sold in smaller lots.

After that, why, we continued with the closing of the loan.

Q Directing your attention to five of the exhibits before you, Exhibits 125, 122, 123 which is in evidence, 126 and 305, can you identify those exhibits?

A 125, the first document, is the note that was signed by Mr. Mullenax in the amount of $60,000.

Q Addressing yourself first to that particular document which is, I believe, the first page of Exhibit 125, did you see that signed by Mr. Mullenax in your presence?

A Yes.

Q You will see there is some material which is filled in on that and also some material in addition to that in handwriting.

Was that material added in Mr. Mullenax's presence?

A The first line -- you are referring to the body of the note where we describe the collateral, which says 10,000 shres of Select Enterprises, Incorporated, certifi-

cate No. 1979, was filled in in his presence.

The next line which describes another certificate, 10,000 shares of Select, was not filled in in his presence.

Q What about the other writing which appears on the face of Exhibit 125, page 1?

A All of the writing on the front of this is either Mr. Mullenax's signature, addresses or my writing, with the exception of the secord certificate I mentioned, on which there is some clerk's writing out of our bank.

Q Let me go on to the remaining documents which are in this exhibit.

Can you identify those as records of the State National Bank of Alabama?

A Yes, sir, I can

Q Were these records prepared in the regular course of business of that bank?

A They would be.

Q Was it part of the regular course of business of that bank to prepare these records?

A Yes.

Q Were they prepared at or about the times indicated on them?

A Yes.

MR. SUSSMAN: Your Honor, the Government offers Exhibit 125 and reserves the right to offer the material which Mr. Collins has identified as not having been signed in Mr. Mullenaxs presence.

THE COURT: You mean the additional entry of collateral? Is that what you are talking about?

MR. SUSSMAN: Yes.

THE COURT: Any objection?

MR. EHRLICH: May I have a voir dire, your Honor? One question.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Mr. Collins, is there a liability ledger as part of Exhibit 125 for identification?

A Yes.

Q Does that liability ledger reflect the current status of the account?

A Does it reflect --

Q The current status of Dr. Mullenax's account with the State National Bank.

A No, it does not. This statement --

Q That is sufficient.

MR. EHRLICH: Your Honor, I object to the

receipt on that basis. It does not reflect the current status of the account.

THE COURT: Overruled.

Anything further?

MR. SUSSMAN: Yes, your Honor, there is.

MR. EHRLICH: Your Honor, another question.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Is that liability ledger a fair and accurate representation of the present status of the account?

MR. SUSSMAN: Objection.

THE COURT: I think the liability ledger speaks for itself.

What else do you want to know about it.

MR. EHRLICH: I'll have to do it by way of written communication, your Honor.

MR. SUSSMAN: May I proceed?

THE COURT: I thought that you had asked that question and gotten an answer and I am trying to fathom what else you want to know.

MR. EHRLICH: Well, that is what I am going to write the communication to the Court about.

THE COURT: Tell me out loud this time. What's wrong with it?

MR. EHRLICH: I can do it by a question.

Q Has there been a payment on the balance of moneys due to the State National Bank by Dr. Mullenax?

THE COURT: You mean since 1970, was the loan paid down by any amount?

MR. EHRLICH: That's right.

THE COURT: All right.

A Yes.

THE COURT: When and in what amounts?

THE WITNESS: $500 was paid down on it within the last few weeks. I don't know the exact date.

Q Is that reflected on that ledger?

A No, it is not reflected there.

MR. SUSSMAN: Objection.

MR. EHRLICH: Your Honor, consequently --

THE COURT: In other words, this document was prepared before the last few weeks?

THE WITNESS: Yes, sir. This document was prepared back in '70 and '71.

MR. EHRLICH: Consequently, your Honor, certain entries under the column "Collateral" or "Endorser" would not be proper.

THE COURT: That objection is overruled.

MR. SUSSMAN: May I proceed, your Honor?

THE COURT: Yes.

BY MR. SUSSMAN:

Q Directing your attention to Government Exhibit 122 for identification and 123 in evidence, can you tell us, please, what those exhibits are?

A 122 is a Xerox copy of a stock certificate on Select Enterprises, issued to Joe Boyd for 10,000 shares of Select.

Q And 123, sir?

THE COURT: Isn't there a power of attorney also in 122, attached to it?

THE WITNESS: Yes, sir. There is a power of attorney attached to it, signed by Mr. Boyd and guaranteed by a bank in Dallas.

Q And assigning the stock to whom?

A To Mr. Ernest R. Mullenax.

Q What about 123, Mr. Collins? Can you identify that?

A It is a Xerox copy of a stock certificate, 10,000 shares of Select Enterprises, Incorporated, issued in the name of J. J. Joiner; also a stock power signed, attached to this, signed by Mr. Joiner and guaranteed by the bank.

THE COURT: Assigning the stock to whom?

THE WITNESS: To Mr. Ernest R. Mullenax.

Q What if any relationship do these two certificates have to the loan to Mr. Mullenax that we have been discussing?

A These two certificates were offered as collateral, one of which was offered as security on the $60,000 note of Mr. Mullenax; the other certificate offered as collateral on a note that our bank had on our books in the name of Joint Talent Group.

Q With respect to the second of the certificates you just mentioned, who was it who offered it as security with respect to that loan?

A Mr. Mullenax.

Q Was that done contemporaneously with the $60,000 note of his that you have described?

A It was.

Q I direct your attention to Exhibit 126 for identification and ask you if you can identify that document?

A Yes.

Q Would you tell us what it is, please?

A The first document in this exhibit is authority to pledge securities belonging to Mr. Mullenax to the debt of Joint Talent Group, Incorporated, describing 10,000

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shares Select Enterprises, certificate No. 1939.

Q Was that signed in your presence by Mr. Mullenax?

A It was.

Q What about the second page?

A The second is stock power, two stock powers, and the other two documents are both stock powers signed by Mr. Mullenax.

Q In your presence?

A In my presence.

MR. SUSSMAN: The Government offers Exhibits 122, 125 and 126 -- 123 having previously been received.

MR. EHRLICH: No objection.

THE COURT: Received.

(Government's Exhibits 122, 125 and 126 were received in evidence.)

Q Directing your attention to Government Exhibit 305, Mr. Collins, can you identify that document as a record of the State National Bank of Alabama?

A Yes, it is a record of the bank.

Q Was it prepared in the regular course of business?

A It would be. This is a document prepared from film that we make of all items going through the bank.

Q Was it part of the regular course of business of the bank to prepare that document?

A Yes.

Q Was the document prepared at or about the date appearing on it?

A Yes.

Q Does the document bear any relationship to the $60,000 loan which Mr. Mullenax had with your bank on May 8. 1970? Yes or no.

A Yes.

MR. SUSSMAN: We offer the document.

MR. EHRLICH: No objection.

THE COURT: Received.

(Government's Exhibit 305 was received in evidence.)

Q Mr. Collins, would you please describe to the jury the loan transaction which Mr. Mullenax entered into with the State National Bank on May 8, 1970?

A In our granting the $60,000 loan request to Mr. Mullenax, there were other items involved, one of which was the giving us some additional collateral to support our loan that we had made to the Joint Talent Group, Incorporated, which was 10,000 shares of Select that I just described and the second provision was a note that we had

on our books in the name of Mr. Ray Lewis.

MR. EHRLICH: Your Honor, I move to strike that portion of the testimony. The relationship, the legal relationship is reflected by the note that is signed. Any other matter is collateral and testimony would be improper pursuant to the questionthat was asked.

THE COURT: Overruled. Motion denied.

Q Continue, Mr. Collins.

A We had a loan on our books in the amount of $20,000 to Mr. Lewis, who was a representative or an associate of the same company that Mr. Mullenax was representing and part of the negotiations in the loan was that Mr. Lewis' debt, which was past due at the time, would be paid off.

Q What if any relationship does Exhibit 305 have to that portion of the agreement?

A It pays Mr. Lewis' note off. This document is the $25,480 which represented principal and interest on the $20,000 note.

Q That document is payable to Donald E. Rouse?

A It is.

Q That pays off Mr. Lewis' note?

A Yes. Mr. Rouse was an endorser on Mr. Lewis' note.

MR. SUSSMAN: May we have that added to the exhibit, please?

THE COURT: Yes.

Q We now direct your attention to Government Exhibits 309 and 127, 309 being already in evidence and 127 having been marked at this point just for identification.

With reference, first, to Exhibit 309 in evidence, can you identify any portion of Exhibit 309 as a document which the State National Bank sent anybody?

A Yes. There are two portions of this that would be documents that came out of our bank.

The third item in the group is a wire that was sent to East Side National Bank in Wichita, Kansas with

reference to a collection item that they had sent to our bank for payment advising that we would remit on it, that we would pay.

The fourth document is a copy of a document that we prepare on any item that comes into the bank for collection for our records.

Q Directing your attention to Exhibit 127, can you identify any part of that exhibit as a record of the State National Bank?

A Yes. All of these items would be records out of our bank.

The first item is a photostatic copy of a federal reserve draft that we issued on our account to the Federal Reserve Bank of Birmingham for $25,000 payable to the East Side National Bank.

The second item is a copy of the $25,000 check drawn on our bank by Mr. Ernest R. Mullenax.

The third item is a copy of a $25,000 check drawn on our bank by Mr. Mullenax.

Q Is that the same check or a different check for the second item?

A It would appear to be the same check, although there are notations on the second item that are not shown on the third item. The same amount, the same dates, etc.

Q What is the last item?

A The last item is a copy of the document I described earlier where we prepare documents on any collection items that are sent to the bank for handling.

THE COURT: We will suspend now for a short recess.

(Recess)

(Jury in box.)

BY MR. SUSSMAN:

Q Mr. Collins, directing you to Government Exhibit 127 that we were talking about just before the recess, are those documents which were prepared in the regular course of business of the State National Bank?

A They would be.

Q And was it part of the regular course of the bank to prepare them?

A Yes.

Q Were they prepared at or about the time they are dated?

A Yes.

MR. SUSSMAN: We offer them, your Honor.

Perhaps I can describe it most readily this way: This lowest document --

THE COURT: Do you want to cut that off?

MR. SUSSMAN: We can either mark that or physically remove it from here.

THE COURT: Remove it physically from the original offering.

Is there any objection, Mr. Ehrlich?

MR. EHRLICH: To Exhibit 127, no.

(Government Exhibit 127 received in evidence.)

Q Mr. Collins, what if any relationship is there between Exhibit 127 and Exhibit 309?

A One of the documents in 127 is a portion or a copy of one of the documents that is in 309, which is the document that describes a collection item received for collection.

Q Can you describe the transaction, if any, between your bank and the other bank disclosed there?

A These banks would reflect that the East Side National Bank sent to us for collection a check or an item for $25,000 drawn by M. L. Mullenax which we later remitted and stamped our document as being paid on May 14, indicating that we sent it back in payment to the East Side National Bank.

Q Do those documents indicate what account in your bank was charged for that $25,000 remittance?

A Exhibit 309 does not. Exhibit 120, I believe,

was the number that does.

Q What account is that, sir?

A Ernest R. Mullenax.

Q What if any relationship does that account have to the $60,000 loan made by your bank to Mr. Mullenax on the 8th of May?

A The proceeds of the loan, of the $60,000 loan, were deposited to Mr. Mullenax's account with our bank.

Q Directing your attention to Government Exhibit 386 for identification, can you identify that as a record of the State National Bank?

A Yes.

Q Is that a record prepared in the regular course of business of that bank?

A It would be.

Q Is it part of the regular course of that bank to prepare that record?

A Yes.

Q Was it prepared at or about the time indicated on it?

A Yes.

Q Does it have any relationship to the account of Mr. Mullenax that you have previously discussed?

A It does. It is a check drawn on Mr. Mullenax's

account with our bank.

MR. SUSSMAN: We offer the exhibit.

MR. EHRLICH: No objection.

THE COURT: It will be received.

(Government Exhibit 386 received in evidence.)

Q Directing your attention to Covernment Exhibit 128, can you identify that document?

A Yes. This is a note signed by Ernest R. Mullenax dated May 18, $5,000.

Q Are you familiar with the transaction in which that note was signed?

A I am.

Q Tell the jury, please, what that transaction is.

A This is simply an open note form, unsecured note form, $5,000, that we handled on May 18, 1970 to mature June 8, 1970.

Q Is that a loan from your bank?

A From our bank to Mr. Mullenax.

MR. SUSSMAN: We offer the exhibit.

(Government Exhibit 128 received in evidence.)

Q Directing your attention to Government Exhibit 129, can you identify that?

A Yes. These are two stock certificates, each being Select Enterprises, Inc., in the name of Ernest R.

Mullenax. Each one is for 10,000 shares of stock.

Q What if any relationship do these stock certificates have to the loan made to Mr. Mullenax on May 8?

A These stock certificates would be the collateral on the loan handled on May 8 replacing the stock certificates that were issued in Mr. Joiner's and Mr. Boyd's names and transferring ownership over to Mr. Mullenax.

Q Directing your attention to the first page of Government Exhibit 125 in evidence, what if any relationship do those two certificates have to the first page?

A These two certificates are described on the note form that was handled on May 8 for $60,000 for Mr. Mullenax. There is an indication on this note form for new certificate numbers.

Q Has the note of May 8, or the note of May 18, ever been paid?

A No, they have not.

MR. SUSSMAN: No further questions on direct examination.

THE COURT: Is there anyone prior to Mr. Ehrlich who wants to cross-examine?

CROSS-EXAMINATION

BY MR. SEGAL:

Q The bank has never sold any of its Select shares that were held as collateral in these loans you were talking about, has it?

A No, we have not sold any.

Q You have made loans in the past on stock which is listed or unlisted over-the-counter stocks? You have made loans on securities of that nature as collateral?

A Yes.

Q The bank has not been indicted for this transaction?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

Q Have you been indicted for this transaction?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

MR. SEGAL: Nothing further.

CROSS-EXAMINATION

BY MR. EHRLICH:

Q Mr. Collins, my name is Joseph Ehrlich and I represent Dr. Mullenax.

We have never met before, have we?

A We have not.

Q We have never discussed this case?

A We have not.

Q Before May 1970, had you ever met Dr. Mullenax?

A Yes.

Q Was he introduced to you at that time by Donald Rouse?

A He was.

Q Each and every time you have ever met Ernest R. Mullenax it has been in the presence of Donald Rouse in the year 1970?

A I would say a large percentage of the times. I cannot say every time but certainly a large percentage of the time.

Q In May of 1970 each and every time you met with Ernest R. Mullenax was it with Donald Rouse?

A In May of 1970 I would say yes, it was.

Q Are you familiar with the companies Joint Talent Group, Continental General Corporation, and Continental General Life Insurance Company?

A I am.

Q Was the State Bank of Alabama in May 1970, the bank which those companies employed?

A We had accounts on our records, on our books, in the names of the insurance company, Continental General

Insurance, and Joint Talent.

Q Was Donald Rouse the chairman of the board of those corporations which I have just named?

A I believe he was.

Q You knew Mr. Rouse, did you not?

A Yes, I knew him.

Q When he ever had a financial problem or required money for the corporations, who in the State National Bank would he contact?

A I serviced the loan myself.

Q You serviced the business for those three companies?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q Now, being the banker for those companies, did you know of Mr. Rouse's background?

A I knew some of his background, yes.

Q Did you know whether he was with the chief officer for Champion Life Insurance Company? What did you know of his background?

A I knew that Mr. Rouse had come into Alabama representing Joint Talent, who had bought the company by the name of Daily Health Insurance, that had been known to our bank for a long number of years, representing hmself to represent a group of investors that had organized under the name of Joint Talent Group for the purpose of buying insurance operations.

Q You being the person approving loans to those three companies which Donald Rouse was the chairman of the board for, you didn't know anything further about his background or experience in the insurance industry?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained; argumentative.

Q Is there anything else you knew about Mr. Rouse's background?

A I knew that he was out of the Midwest and that we had checked credit on him through some banks in that area.

Q Did you make an investigation about the work that he had performed in the insurarance industry?

A I do not recall anything along that line, only what would have come to us through the normal investigation of the banks in that area.

Q Was he a failure in the insurance business?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q When Mr. Rouse introduced Dr. Mullenax to you, prior to May 1970, what was the substance of those conversations?

A He brought him to the bank, introduced him as being a new individual who represented Continental General Life; that he was attempting to sell stock in the company at that ti and Mr. Mullenax was represented as having experience and that at a later time it was represented to me that he would become the president of the company.

Q Mr. Rouse represented to you that he wanted Ernest R. Mullenax to come with Continental General Life Insurance Company?

A Yes.

Q This was Months before May 1 970?

A Well, it was before May 1970, yes.

Q With the proceeds of the $60,000 loan which has

been the subject of the testimony, did you know that that money or a portion of that money was to be employed by Dr. Mullenax to secure the presidency of Continental General Life Insurance Company?

THE COURT: You mean to buy the presidency?

MR. EHRLICH: To secure it. I will develop it.

THE COURT: The word "secure" -- buy it?

MR. EHRLICH: Let me withdraw it and rephrase it.

Q Who was the president of Continental General Life Insurance Company in April 1970?

A Mr. Ray Lewis.

Q Did he owe the State National Bank money?

A Yes, he did.

Q About how much?

A 20,000.

Q Mr. Collins, you saw a check this afternoon from Ernest Mullenax to Donald Rouse in the amount of 25,000 some-odd dollars. Was that money used to pay off the note of Ray Lewis to the bank?

A Part of it was, yes.

Q How much is part of it?

A I believe $20,480, as I recall.

Q I show you Government Exhibit 127 and 309 for identification.

jbs Collins - cross

Do those documents reflect a transfer of $25,000 from Dr. Mullenax's account at the State National Bank of Alabama to his account at the East Side National Bank in Wichita, Kansas?

A It does represent $25,000 being paid by our bank on collection item sent by the East Side National Bank, that item being one that Mr. Mullenax had given them for collection.

Q So, we have $25,000 going to Donald E. Rouse -- excuse me -- that was used to pay off an outstanding note due from Lewis to the bank and $25,000 going from Mullenax's account at your State National Bank to his account in Wichita, Kansas?

A Right.

Q When Dr. Mullenax paid off Mr. Lewis' outstanding note, was that note in default?

A Yes. It was past due at that time.

Q Was the bank worried about collecting the proceeds of that note?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Did the bank demand Mr. Lewis to make payment on that note?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Did the bank demand Mr. Lewis to make payment on that note?

MR. SUSSMAN: Objection.

THE COURT: Overruled.

A Yes. We had asked for payment from Mr. Lewis.

Q When Dr. Mullenax paid off Mr. Lewis' note, was any stock in Joint Talent Group and Continental General Life Insurance Company released to Dr. Mullenax's favor?

A There was some stock of those two companies on Mr. Lewis' note. This was transferred into Dr. Mullenax's name.

I am not sure whether the stocks were left there as additional collateral on his new debt. I believe they were released. They weren't --

Q But they were released to Dr. Mullenax's favor, to him?

A Released to Mr. Rouse, who had given us a check. The check was payable to Rouse.

Q In May 1970 did You know a James L. Davis?

A I can't recall Mr. Davis offhand.

(Defendant Mullenax's Exhibit J was marked for identification.)

Q Again you were the banker for Continental

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General Corporation?

THE COURT: Please don't go over what we have already heard.

MR. EHRLICH: Sorry, your Honor.

Q Mr. Collins, I show you what has been marked Defendant Mullenax's Exhibit J for identification.

Does this in any way refresh your recollection?

A No, it doesn't. If I have seen that letter before, I do not remember it.

Q Did you know that on May 8, 1970, Dr. Mullenax was elected as a member of the board of directors and of the executive committee of the Continental General Corporation?

A I could not pinpoint it to a date. I know there was a lot of conversation about him taking over the presidency of the insurance company but I do not know a date on it.

Q Did you not know that he paid off Mr. Lewis' $20,000 note to become president of the Continental General Life Insurance Company?

A I knew he had paid off the note.

Q Didn't you testify that Mr. Rouse wanted him in Continental General Life Insurance Company?

A Yes.

Q And that they had come to the bank to secure this loan in order to pay off Mr. Lewis' note?

MR. SUSSMAN: Objection.

THE COURT: I think we have been over that.

MR. EHRLICH: There is one other aspect to it.

THE COURT: I know. Objection sustained.

Go on to another question.

MR. EHRLICH: If I may, your Honor, one question in this category.

THE COURT: I don't know. Try it and see.

MR. EHRLICH: All right. Thank you.

Q Was payment of the $20,000 note to Mr. Lewis part of the ~~conversation~~ CONSIDERATION of the bank's grant of the $60,000 loan to Dr. Mullenax?

A It was part of it, yes.

Q Did Mr. Rouse ever tell you or discuss with you about the future possibilities of the Continental General Life Insurance Company with Dr. Mullenax in it?

A Yes.

Q Did he have high hopes for its success with Dr. Mullenax holding a position in the company?

A He had stated statements of that nature, yes.

Q There was also an outstanding loan in the name of Joint Talent Group?

A Correct.

Q Dr. Mullenax had with him 20,000 shares of Select Enterprises; is that not so?

A That's so.

Q 10,000 shares of that stock was pledged with reference to the $60,000 loan granted by the bank?

A That's correct.

Q And the other 10,000 shares were placed as additional collateral for the outstanding loan at Joint Talent Group?

A That's correct.

Q To the benefit of the bank?

A Yes.

Q It was your hope, was it not, as a member of that banking organization that the Continental General Life Insurance Company with its other connected companies, Joint Talent Group and Continental General Corporation, would grow and prosper, was it not?

A Certainly.

Q Was it your understanding that part of the proceeds of this loan would be to help these companies, particularly Continental and General Life Insurance, prosper?

A That was discussed. Yes.

Q As you said, Dr. Mullenax was an asset to that company?

A They felt he was.

Q Because of those considerations, were you, as a banker, anxious to make that loan?

A Because of what considerations?

Q Because as a member of the Banking Corporation that you hoped that those companies would grow and prosper?

A That was why we started banking to begin with. We felt that they were there to grow and prosper.

Q So, Mr. Rouse and Mr. Mullenax came to your bank the morning of May 8, 1970, and by the time they left that day they had a $60,000 loan?

A They had been there earlier, left and came back.

Q Did you ever testify to the contrary?

A Not to my knowledge.

Q Did you speak to anyone at Crown Securities?

A Yes, I did.

Q Who was that person?

A Mr. John Wells.

Q Did you ask Mr. Wells whether 10,000 shares of Select Enterprises, Inc. stock could be sold on the market?

A Yes. We discussed whether a large block of it would affect the market or not or whether it would have to be sold in smaller blocks.

Q Was his answer that it could not?

A He answered that it would probably affect the market and cause the stock to go down some by selling a large block; that it might be hard to sell at the price we were talking about.

Q Did it give you any concern that that 10,000 shares pledged as collateral for the $60,000 loan was not adequate to cover the loan?

A Not at that time, it didn't.

Q Mr. Wells did not tell you that to sell that stock in an amount of 10,000 would cause the price of the stock to dramatically fall?

MR. SUSSMAN: Objection. Without foundation.

THE COURT: Sustained.

Q Did Mr. Wells say there was an active market in the stock?

A Yes, he did.

Q In a memorandum concerning your transactions with Dr. Mullenax with respect to the $60,000 loan, did you ever state --

MR. SEGAL: Objection.

THE COURT: You may change the question.

Did you ever make a statement. And what is the date of the memorandum and to whom was it?

MR. EHRLICH: I think it is an internal document, your Honor, at the banking institution.

The date is --

THE COURT: Show it to the witness and ask him if he recognizes it.

MR. EHRLICH: Does this have to be marked, your Honor?

THE COURT: Just show it to him. It is late in the afternoon and you are stalling.

MR. EHRLICH: Yes, your Honor. I am trying to proceed.

THE COURT: Show him the paper.

Is that your memorandum?

THE WITNESS: Yes, it appears to be.

THE COURT: Would you please look at the portion that the lawyer refers to and read it to yourself.

MR. SUSSMAN: May we have a number on that, which document it is that the witness is being shown?

THE COURT: Is there a number on it?

THE WITNESS: No, sir, there is not.

MR. SUSSMAN: May we have some identification?

THE COURT: January 7, 1971. It is two pages.

Now he has looked at the memorandum. What's the question?

Q Looking at that paragraph, was the basis for your grant of Dr. Mullenax's loan the excellent credit reports you received from the Union National Bank?

A That would be one of several reasons for granting it, yes. We were satisfied with the credit report we received.

Q Did you state that Mr. Wells told you --

MR. SEGAL: Objection.

THE COURT: Just a minute. The objection to your reading from the document not in evidence is correct and sustained. He has given you an answer to the question that you have asked. Don't try to accumulate the testimony.

Q Without reading from that document, did Mr. Wells tell you that it would not be possible to sell a very large block of Select stock?

MR. SUSSMAN: Asked and answered.

THE COURT: Answer it again.

Did he tell it to you that way?

A Our conversation with Mr. Wells was that a very large block of stock --

MR. EHRLICH: Your Honor, I'm sorry.

THE COURT: Just a minute. You either want the answer or not.

MR. EHRLICH: I want a yes or no.

THE COURT: Get back to where you belong, please, Mr. Ehrlich.

MR. EHRLICH: Yes, your Honor.

THE COURT: Now you may answer the question as to what you told Mr. Wells. You have told it to us twice but you can tell it a third time, what he said to you.

THE WITNESS: Our conversation was that there was a market for the stock in the $12 range, that it would not be possible sell a large block of it without affecting the price of the stock.

Q And yet you granted --

THE COURT: That is argumentative.

Q In addition to the $60,000 loan, did you grant a further loan to Dr. Mullenax?

A For $5000.

Q What was the date of that loan?

A May 18.

Q Did you require any security for that loan?

A I did not.

Q And in not requiring any security, were you basing that loan on the fact that Dr. Mullenax had

excellent credit reports from the Union National Bank?

A That and his financial statement.

Q Did Dr. Mullenax have any outstanding loans with the Union National Bank?

A I believe he did at the time of our credit check.

Q What did they recommend as a credit line?

THE COURT: I think we have had enough of this area.

You may go on to another area. At my discretion I will terminate that area of the examination.

Q Dr. Mullenax's $60,000 loan was granted in one day, May 8, 1970, is that not so?

A Yes, that is when it was granted.

Q At the time that you granted Dr. Mullenax the $60,000 loan, did you have a copy of his financial statement?

A Yes.

Q You noted this morning that there was a notation, received May 11.

A That's right. That's the notation of our credit department indicating what date it got to them and went into the credit files. That's not the date it came into the bank.

Q Before you approve a loan, doesn't a financial statement have to be looked at by the credit department?

A No, it does not.

Q Referring to what has been marked as 3523 and furnished to me by the government, were you asked the following questions and did you give the following answers, page 450, line 1:

"Q The statement of Mr. Mullenax purporting to be a balance sheet which you handed me, was this prepared in your presence?

"A No, it was not.

"Q Was this delivered to you as you testified a few days prior to your making a loan?

"A It was delivered to me at the time that he requested the loan.

"Q At the time he requested the loan?

"A Which was a few days prior to the closing of it, yes.

"Q On the day you received it, did you stamp it?

"A I didn't stamp it. The credit department stamps it on the date it gets to their files.

"Q I see.

"Does the credit department ususlly check the loans prior to the time that the loans are made?

"A What do you mean?

"Q Check the individual to determine if he is worthy of credit?

"A They would do whatever we asked them to do for us. They check them out through the Union Bank, as far as references on him, yes.

"Q So the credit department would have checked him out and seen this statement prior to making up the loan?

"A I don't know whether they saw the statement prior to that or not. It is not necessary for them to see. I don't know what date they stamp it. It's not necessary for them to see the statement.

"Q But they do see the statement?

"A Prior to closing of the loan?

"Q Yes.

"A I can't answer that."

THE COURT: What is the purpose of reading that?

MR. EHRLICH: It points out --

THE COURT: It points out nothing.

Q Was this loan granted in one day?

A Yes, May 8.

Q Were your answers to these questions truthful?

A Yes.

Q Was this loan negotiated in one day?

THE COURT: I think we have covered that point sufficiently on cross-examination.

MR. EHRLICH: Your Honor, the word "negotiate," it was used by Mr. Collins.

THE COURT: I think we have covered that sufficiently, Mr. Ehrlich.

MR. EHRLICH: Can I ask this one last question on this particular point?

THE COURT: I don't know. Ask it and we will see.

Q Was the loan negotiated on one day, May 8, 1970?

THE COURT: You distinguish between "negotiated" and "obtained"?

MR. EHRLICH: I am adopting Mr. Collins' own language.

THE COURT: All right.

A We negotiated the loan on May 8 and closed it on

pgas4 Collins - cross

that day.

THE COURT: Is that all?

MR. EHRLICH: No, your Honor. I will try to be as quick as possible.

Q Has Dr. Mullenax made a payment recently on this loan, and this was in the amount of $500?

A $500.

Q He still owes the balance of the loan?

A That's correct.

Q He is legally obligated to pay it?

A That's correct.

Q In 1970 or 1971, did you ever discuss Dr. Mullenax's inability to pay the loan with Mr. Rouse?

A I'm sure I probably did, but I can't recall any conversation on that.

Q Referring to Exhibit 3523, page 553, line 3, were you asked these questions and did you give these answers:

"Q Have you ever asked Mr. Rouse, whom you had known for at least two years, as to how he could have allowed you to be put in this position?

"A I sure have.

"Q And what has he said to you?

"A He said that it was something that was unforeseen,

that he had no right to suspect the hardship that they had had."

Did you understand Mr. Rouse by the word "they" to be referring to himself and Dr. Mullenax?

A I understood that to be referring to the company.

Q Do you know whether or not the insurance company ever obtained its charter to do business in the state of Alabama?

A I don't believe they ever met their stock sales quotas on it.

Q And, therefore, the company is no longer in existence?

A To my knowledge, it is not.

Q Referring to page 594, line 20, were you asked this question and did you give this answer:

"Q Had you advised your legal counsel that Don Rouse had told you that the State National Bank would not lose any money on Dr. Mullenax's debt?

"A Yes. I had told him, my counsel, that, but I don't know how Mr. Rouse thinks I will come out, but he did make that statement. I hope it's true."

Was that question and answer asked and given?

A I'm sure it was.

MR. EHRLICH: No further questions.

THE COURT: Is there any other defendant who wants to examine?

(Pause)

Is there any redirect examination?

MR. SUSSMAN: No, your Honor.

THE COURT: Thank you very much.

You are excused.

(Witness excused.)

MR. MAC DONALD: Your Honor, there is a stipulation that the exhibits, Government Exhibits 328 through 333 and 340 were produced by the defendant Bissett during the course of the grand jury proceedings in this matter. In addition, Government Exhibits 335 and 336 would be authenticated as business records by the custodian of records of Bissett & Logar if called as a witness.

In addition, Government Exhibit 344 would be authenticated by the court reporter taking that transcript.

We offer each of those exhibits and, in addition, we offer Government Exhibits 343 and 345 on the basis of their self-authenticating character.

Finally, it is stipulated that at all relevant

MR. MacDONALD: With respect to the mail fraud counts, nearly half of the letters established mailings to or mailings from Nevada National Registrars, as to which he was the president and the sole person beyond Miss Smith who operated that transfer agency.

The Government's position is that the establishment of the corporation was with a view toward the distribution of its securities, that the $40,000 price best evidences the fact that no normal corporate use was envisioned but rather a distribution of securities was envisioned and if there were any doubt in that regard, Mr. Titlow's having falsely denied under oath to the SEC the basic agreement of sale puts the matter beyond a reasonable doubt at this point, at least for a Rule 29 motion.

THE COURT: Certainly for the present, and that seems to be sufficient, the motions of the defendant Title are denied.

Mr. Ehrlich.

MR. EHRLICH: Yes, your Honor.

Defendant Mullenax, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, requests the Court for a directed verdict of acquittal inasmuch as with respect to each count and each and every element of each

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respective count the prosecution has filed to meet its burden of proof and the evidence has clearly insufficient to sustain it.

THE COURT: The motions to dismiss the indictment or a directed verdict for the defendant Mullenax are denied.

MR. EHRLICH: Thank you, your Honor.

THE COURT: Mr. Lesser.

MR. LESSER: If your Honor please, on behalf of defendant Knisely, I move for a judgment of dismissal on the ground that there is absolutely no evidence that Knisely knowingly and wilfully participated in the conspiracy. As a matter of fact, the Government's case affirmatively proved that Knisely was not a participant and that Knisely had no idea what this was all about and was merely a nominee.

THE COURT: Mr. MacDonald.

MR. MacDONALD: In the Testimony before the Securities and Exchange Commission, the defendant Knisely falsely denied knowing Alan Segal, the person who he met in the hotel room with on the occasion of his signing the Riverside and Diamond Bros. contracts, later presented to the SEC.

THE COURT: Well, the negative does not estab-

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record of what they heard?

MR. BRODERICK: I can show in the record where there was a mistake as to another point, where they used the word Karfunkel instead of Gardner.

THE COURT: That is a different point. It has nothing at all to do with the subject that we have now.

If I receive a certificate from the Southern District Court Reporters in respect of the reporter who took that testimony in the area of 190 to 192, I will deem the matter closed and, if there is no such certificate, I will reopen it.

I believe that that is all for tonight, gentlemen.

MR. EHRLICH: Your Honr, I neglected to renew my pretrial motions.

THE COURT: Your pretrial motions are deemed renewed and disposed of accordingly.

MR. SEGAL: For the record, may the objections that remain as to other individuals, besides the particular defendant, be deemed applicable to the defendants, to all defendants where appropriate?

THE COURT: Mr. Segal, your very attractive offer at this time ex post facto has to be considered with a hindsight view. I have made myself clear throughout

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v -	:	
JOE TRUMAN BOYD et. al.,	:	75 CR 140
Defendants.	:	
	:	

REQUESTS TO CHARGE ON BEHALF OF DEFENDANT, ERNEST R. MULLENAX

The defendant, ERNEST R. MULLENAX, respectfully requests the Court to include the following in its charge to the jury:

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REQUEST NO. 1

We are now at the stage of the trial where you will soon undertake your final function, as jurors, and here you perform one of the most sacred obligations of citizenship. You are acting as ministers of justice. You are to discharge this final duty in an attitude of complete fairness and impartiality and, as was emphasized by me when you were selected as jurors, without bias or prejudice for or against the Government or the defendants as parties to the controversy.

Adapted from Charge of Murray Gurfein, J. in United States v. Steel 73 Cr. 659 (S.D.N.Y. 1974)

REQUEST NO. 2

The fact that the Government is a party to this litigation entitles it to no greater consideration than that accorded to any other party to the litigation. And that is a great principle. Many a bloody page of history made that principle of law come true in this land. So when the Prosecution comes into court, it is just the same as Mr. Smith, it has no edge. But, by the same token, the Prosecution is entitled to no less consideration than any other litigant to the litigation. That is the reason we say with great pride, and we mean it, that all parties, government and individuals alike, stand equal before the bar of justice.

Charge of Cooper, J. in United States v. Infanti and Kurtz, 71 Cr. 676 (S.D.N.Y. 1972)

REQUEST NO. 3

The indictment is merely an accusation, a charge. It is no evidence or proof of a defendant's guilt.

The Prosecution has the burden of proving the charges against the defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the Prosecution throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment.

The presumption of innocence was in favor of the defendant at the start of the trial, it continued in his favor throughout the trial, and it continues in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if, as and when you are satisfied that the Prosecution has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt of each and every element of each charge.

United States v. Gaunt, 184F.2d 284, 292 (CA 1, 1950), cert. den. 340 U.S. 917 (1951)

United States v. Molin, 244 F.Supp. 1015, 1017 (D.Mass. 1965)

United States v. Corallo, 67 Cr. 1051 (p.2273) (S.D.N.Y. 1968)

REQUEST NO. 4

The burden cast upon the Prosecution under the law to prove the defendant guilty beyond a reasonable doubt is one of the most sacred principles of our criminal jurisprudence. A defendant has a perfect right to say: you have charged me with a crime, now go ahead and prove it, and prove it beyond a reasonable doubt. The law compels the Prosecution to prove each defendant guilty beyond a reasonable doubt. A defendant has a perfect right to sit here in complete silence. The burden is solely on the Prosecution. That is the law. It is our law that a defendant does not have to prove his innocence.

On the contrary, each defendant is presumed to be innocent of the accusation contained in the indictment. This presumption of innocence is a protective shield covering every defendant. A presumption of innocence was in favor of each defendant when the trial began, it has been in his favor throughout the course of this trial, it is in favor of each of the defendants right now while I address you.

A defendant is presumed to be innocent of the criminal charge lodged against him. That presumption of

REQUEST NO. 4 (con'd)

innocence is removed only if and when you, the jury, declare that guilt has been established beyond a reasonable doubt. Then that protective shield falls away from him. The presumption of innocence is sufficient to acquit a defendant of the crime charged against him unless it is overcome by evidence that satisfies your mind beyond a reasonable doubt of the defendant's guilt, and unless you are so satisfied, it is your sworn duty to find the defendant not guilty.

Adapted from Charge of Cooper, J. in United States v. Infanti and Kurtz, 71 Cr. 676 (S.D.N.Y. 1972)

REQUEST NO. 5

A reasonable doubt is a doubt based on reason which arises from evidence or lack of such evidence. It is such a doubt which causes a person to hesitate in the more serious and important affairs of his life. Proof beyond a reasonable doubt must be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

A reasonable doubt exists if, after careful and impartial consideration of all the evidence in the case, you do not have an abiding conviction which amounts to a moral certainty that a defendant is guilty as charged. So, if you view the evidence in the case as reasonably permitting either of two conclusions--one of innocence, the other of guilt--you must adopt the conclusion of innocence and acquit.

United States v. Armone, 363 F.2d 385, 393 (CA2, 1966) cert. den. 385 U.S. 957

Thomas v. United States, 363 F.2d 159, 162 (CA9, 1966)

Mathes and Devitt, Federal Jury Practice and Instructions, §8.01 (1968 Supplement)

A 694

REQUEST NO. 6

Count One of the indictment alleges a conspiracy between the defendants to violate Sections 1001, 1341 and 1343 of Title 18, United States Code and Sections 77e, 77q and 77x of Title 15, United States Code.

The conspiracy charged in this case is a combination, or agreement of persons to accomplish, by concerted action, a criminal or unlawful object or any object by unlawful means. The gist of conspiracy is the unlawful agreement or combination between the defendants to violate the law. In order to establish that these defendants conspired to violate a Federal statute, the Prosecution must prove, beyond a reasonable doubt, with respect to the defendants, each of the following essential elements that:

1) The conspiracy as charged in the indictment was willfully formed and was existing at or about the time alleged;

2) That the defendants voluntarily and willfully became members of that conspiracy with knowledge of its unlawful purposes, and participated in it with such knowledge and with the specific intention of furthering its unlawful or criminal objectives;

REQUEST NO. 6 (Cont'd.)

3) One of the defendants thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time or place alleged; and

4) Such overt act was committed in furtherance of some object or purpose of that particular conspiracy.

United States v. Corallo, 413 F. 2d 1306 (CA2, 1969) cert. den. 396 U.S. 958.

REQUEST NO. 7

In order for you to find that the defendants were in the alleged conspiracy, the Prosecution must establish beyond a reasonable doubt that they, aware of its purposes and objects, entered into the conspiracy with the requisite criminal intent; that is, that they knowingly did an act which the law forbids, namely, purposely intending to violate that law.

Thus, you cannot find that the defendants entered into this alleged conspiracy merely because you may find that the worth of Select Enterprises Inc. and its stock was less than represented. To find they entered the conspiracy charged in the indictment, you must be convinced beyond a reasonable doubt that they had the criminal intent -- that the representations with respect to the company's worth and the value of its stock were made with the result of defrauding the purchasers or prospective purchasers, or institutions accepting Select stock as collateral.

United States v. Tortorello, 480 F. 2d 764 (CA2, 1973) cert. den. 94 S.Ct. 63.

REQUEST NO. 8

If the prosecution has proved, beyond a reasonable doubt, that a conspiracy as charged did exist, you must next determine whether each defendant on trial was a member of it. You must do so without regard to, and independently of the statements, acts or declarations of the other alleged co-conspirators.

In other words, the alleged participation in a conspiracy by a defendant on trial cannot be established against him by what another alleged conspirator said or did in his absence.

As to each defendant, the Prosecution must prove, beyond a reasonable doubt, his participation in the conspiracy by independent proof, based upon the reasonable inferences drawn from his own acts, his own conduct, his own statements or declarations, and his connection with the acts and conduct of the other alleged co-conspirators.

United States v. Corallo, 413 F. 2d 1306 (CA2, 1969) cert. den. 396 U.S. 958.

REQUEST NO. 9

You must acquit a defendant of the conspiracy charge if the Prosecution has not met its burden of proof and established that a defendant knew of the unlawful purposes and unless the Prosecution has further established beyond a reasonable doubt that he entered into the conspiracy with the specific criminal intent to violate the law.

United States v. Tortorello, 480 F. 2d 764 (CA2, 1973) cert. den. 94 S.Ct. 63.

United States v. Cruikshank, 92 U.S. 542, 558.

Developments in Law of Conspiracy, 72 Harvard Law Review.

Horne, Intent Criminal Conspiracy, 89 Univ. Penn. Law Review 624, 625.

REQUEST NO. 10

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of conspiracy, but happens to act in a way which furthers some objects or purposes of the conspiracy, does not thereby become a conspirator.

Ingram v. United States, 360 U.S. 672

Fernandez v. United States, 329 F. 2d 899 (CA9, 1964)

United States v. Agueci, 310 F.2d 817 (CA2, 1962)

Rennis v. United States, 302 F. 2d 5 (CA10, 1962)

United States v. Aviles, 274 F. 2d 179 (CA2, 1960)

REQUEST NO. 11

To convict defendants of counts Two through Twenty-Eight, you must find that three elements exist and each of these elements must be proven beyond a reasonable doubt.

First: That the defendants in connection with the sale of Select Enterprises Inc. stock engaged in a scheme to defraud or in a course of business which would operate as a fraud, or to obtain money and property by making untrue statements of material facts, or by omitting to state material facts which would be necessary to state in order to make their statements not misleading.

Second: That the defendants did so wilfully and knowingly.

Third: That the defendants used or caused to be used the mails in furtherance of the scheme.

REQUEST NO. 12

To do an act knowingly means to do it voluntarily and intentionally and not because of mistake or inadvertence or some other innocent reason.

To do an act wilfully means to do it knowingly and deliberately and with a bad purpose or motive.

If you find the particular defendant you are considering not a party to any scheme to defraud, then it is your duty to acquit such defendant or defendants.

United States v. Steel
Gurfein, J. 73 Cr. 659

REQUEST NO. 13

With respect to counts Twenty-Nine through Forty, you cannot find that any defendant acted with intent to commit a violation of 15 U.S.C. Section 77q simply because you find that stock of Select Enterprises Inc. was placed as collateral for a loan or used as additional collateral for an outstanding loan.

Should you find such use of Select stock, you must then consider all of the surrounding circumstances in order to resolve the separate questions of the intent of each of the defendants.

The Prosecution first must show beyond a reasonable doubt that a defendant had a criminal state of mind.

Morisette v. United States
342 U.S. 246

REQUEST NO. 14

Intent to defraud or to obtain money or property improperly may never be presumed. You must consider each defendant separately in resolving the critical element of intent.

The burden in proving a defendant possessed the requisite intent is at all times upon the Prosecution to prove beyond a reasonable doubt and to a moral certainty that the defendants attempted to or did influence purchasers of Select Enterprises Inc. stock or banks or other institutions accepting said stocks as collateral wilfully, knowingly and intentionally, with a desire to wrongfully influence the purchase or acceptance of the security as collateral.

Intent to defraud means an intent and purpose to deceive others. A fraudulent intent, of course, cannot be presumed. If you find that any untrue representation was made by a defendant in good faith or in the belief that it was true, he cannot be found guilty of fraud.

United States v. Caine
441 F.2d 454 (CA2, 1971)

A 704

REQUEST NO. 15

If you find that the defendant, MULLENAX, lacked the requisite fraudulent intent or if you have a reasonable doubt on this question, you must find him not guilty.

If you find that the defendant, MULLENAX, was motivated by some other intent, then you cannot find him guilty regardless of whether you approve or disapprove of his intent or actions.

United States v. Miller 395 F.2d 483 (CA 7, 1967)

United States v. Molin 244 F.Supp. at 1022-3

REQUEST NO. 16

Where facts or circumstances proved are susceptible of two inferences, one pointing to innocence and the other to guilt, you must adopt the inference pointing to innocence and acquit the defendant. The burden of proof is upon the Prosecution to establish the defendant's guilt beyond a reasonable doubt; the burden is not upon the defendant to establish his innocence.

McCoy v. United States, 169 F.2d 776

The Bridges Perjury Trial, 10 F.R.D. 81, 91

United States v. Projansky, 67 Cr. 729 (S.D.N.Y. 1971) (Lasker, J.)

United States v. Maselli, 71 Cr. 857 (S.D.N.Y. 1972) (Gurfein, J.)

United States v. Coward, 70 Cr. 907 (S.D.N.Y. 1972) (Croake, J.)

United States v. Silverman, 71 Cr. 675 (S.D.N.Y. 1972) (Bryan, J.)

United States v. Infanti, 71 Cr. 676 (S.D.N.Y. 1972) (Cooper, J.)

A 706

REQUEST NO. 17

A defendant must be acquitted of all charges in connection with the sale of unregistered securities in violation of the anti-fraud provisions of the federal securities laws and in violation of the mail fraud statute, if you find that the Prosecution has not proven beyond a reasonable doubt that the defendant was aware of the fraudulent nature of the transaction involving Select Enterprises Inc. stock and specifically intended to violate the law.

United States v. Tortorello
480 F.2d 764 (CA2, 1973)

REQUEST NO. 18

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of a defendant on trial before you must be determined separately with respect to him solely on the evidence presented against him or the lack of evidence. The case of each defendant stands or falls upon the proof or lack of proof of the charge against him and not against somebody else.

It is your duty to give separate personal consideration to the case of each individual defendant. When you do so you should analyze what the evidence in the case showed with respect to that particular defendant.

Unites States v. Steel
73 C2. 659 (S.D.N.Y. 1974)

A 708 REQUEST NO. 19

It must be remembered, that mere association, standing by itself, is not a sufficient basis for finding that a defendant participated in a conspiracy. You may not find the defendant guilty merely because he associated with someone else who happened to be committing the crime charged.

The doctrine of guilt by association has no sanction at all in the law in this court.

Nor is it sufficient for the Prosecution to establish that someone else has committed a crime, or even that the defendant knew that someone else acted in furtherance of the criminal purpose.

United States v. Silverman
Bryan, J. 71 Cr 675 (S.D.N.Y. 1972)

REQUEST NO. 20

The lawyers in this case not only have the right, but, indeed, it is their duty to object to the introduction into evidence of any statements or exhibits or testimony which they believe should not be admitted under the rules which govern trials in federal court. These are questions of legal procedure with which you have no concern and they must not enter your deliberations. No inferences should be drawn from the fact that upon occasion a lawyer for any party here objected and I was required to rule on it one way or another.

REQUEST NO. 21

In determining the facts, it is your recollection and yours alone, that governs. Anything that counsel, either for the Prosecution or a defendant, may have said with respect to matters in evidence, whether during the trial, included in a question, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the Court may have said during the progress of the trial, or may refer to during the course of these instructions, as to any matter in evidence, is not to be taken in stead of your own recollection.

United States v. Corallo, 67 Cr. 1051
(pp 2269-70) (S.D.N.Y. 1968)

REQUEST NO. 22

If a witness has shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars.

You may reject all the testimony of that witness or you may give it such credibility as you may think it deserves.

Charge of Croake, J. in United States v. Coward, et al., 70 Cr. 907 (S.D.N.Y. 1972)

Respectfully Submitted,

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JOSEPH B. EHRLICH,
Of Counsel

A 712

United States District Court
Southern District of New York

U S A

- v -

Joe Truman Boyd et al.,

Defendants

---

75 Cr 140 (MP)

Supplemental Requests To Charge On Behalf of Defendant Ernest R Mullenax

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The defendant Ernest R. Mullenax respectfully requests the court to include the following in its charge to the jury:

Supplemental Request No. A ①

Certain defendants did not take the stand. This is their absolute constitutional right.

A defendant is not required to testify. If you as much as have a shadow cross your mind against a defendant because of his failure to testify you, yourself, violate your own oath. You can not disregard this instruction. So I repeat to you that a defendant in a criminal case does not have to testify, and the fact that he does not testify can not be held against him in any respect whatever.

If you will remember what I told you earlier you will see how this naturally follows. Since the burden of proof rests upon the prosecution and

never shifts, a defendant need not take the stand or even call witnesses. It still remains the burden of the prosecution to prove the guilt of a defendant beyond a reasonable doubt. A defendant also may rely on cross examination of the prosecution witnesses.

So I repeat, in no respect might the fact that the defendant has not testified enter into your deliberations, nor may you draw any adverse inference whatever against him by reason thereof.

Adopted from charge of Cooper J. in United States v. Infonti 71 Cr. 676 (SDNY 1972).

Supplemental Request No. B ⑤

As a general rule the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt from all the evidence.

However, where the acts of a defendant may be given either innocent or guilty construction, the jury should not give them a guilty construction unless so convinced beyond a reasonable doubt.

X To warrant a conviction on circumstantial evidence, each fact necessary for a finding of guilt must still be proved beyond a reasonable doubt, and all of such facts must be

consistent with each other. The circumstances taken together must be conclusive in producing the effect to a reasonable certainty that the accused committed the offense charged.

The combination of a limited number of independent circumstances, each of which is inconclusive, will not justify a conviction and a suspicion is not a substitute for evidence.

Nor would it be sufficient if the circumstances merely render the guilt of the accused probable. The facts must be incompatible with innocence upon any reasonable theory.

In short, in order to justify a conviction,

the circumstances must exclude every reasonable hypothesis of innocence.

Charge of Croake J. in United States v Coward et al 70 Cr 907 (SDNY 1972)

A 718

Supplemental Request No. C ©

If you find that the defendant Mullenax made any payment of money to any defendant or alleged co-conspirator from the proceeds of the loans obtained with the use of Select Enterprises Inc stock, you can not find the defendant Mullenax guilty of the charges unless you find that such payments were knowingly and willfully made pursuant to the alleged scheme to defraud and with the specific intent to defraud on the part of the defendant Mullenax The requisite mental state is the specific intent to defraud. If the defendant Mullenax's acts were done inadvertently, mistakenly or in good faith without intention to defraud or for other innocent reasons

next page please

then he must be acquitted of all charges.

In other words, unless you find beyond a reasonable doubt that the defendant Mullenox obtained loans with the use of the stock of Client Enterprises, Inc. with the express purpose of defrauding in violation of the law and with guilty knowledge and specific intent to defraud, you must acquit him of all charges in the indictment.

United States v. Sheiner
273 F. Supp. 277
aff'd 410 F2d 337
cert. den. 90 S. Ct 68.
United States v. Piepgrass
425 F2d 194 (1970)

Supplemental Request no. D (8)

In such determination, you may consider whether the statements made by the defendant Mullenax to the financial institutions with respect to Select Enterprises Inc. and its stock were made in good faith and in the honest belief that they were true. If you find that any untrue representation was made by the defendant Mullenax in good faith or in the belief that it was true; that he had no knowledge that anything material in the financial statement, brochure, news release of Select, or in the pink sheets were untrue then he cannot be found guilty of fraud, and he must be acquitted.

Jorvis v. United States
90 Fed 243 cert. den.
58 S. Ct 25.

Supplemental Request No E ⑨

In connection with the charge in Count 40 of the indictment, if you find that the defendant Mullenax made a $9000 payment to Mr. Joiner solely pursuant to the grant to him and use of 40,000 shares of Pig n' Whistle stock which the witness Mann testified was at the time of its use worth $1.50-$2.00 a share, which stock was used to obtain a loan from the Town and Country Business Trust, Wichita, Kansas, you can not consider the $9000 payment to Mr. Joiner in the determination of your verdict.

A 722

Supplemental Request No. F1 (18)

If you find that the use of Select Enterprises Inc. stock by the defendant Mullenax at the Home State Bank did not operate in any means or manner as a fraud upon the bank, you must acquit the defendant Mullenax of Count 39 of the indictment.

Supplemental Request No. F 2 (11)

If you find that the defendant Mullenax would have obtained ~~the~~ ~~2~~ loans from the State National Bank and the Town and Country Business Trust without the use of the stock of Select Enterprises Inc., you must acquit the defendant Mullenax of Counts 38 and 40 of the indictment.

A 724

Supplemental Request No. G (12)

If you find the defendant Mullenax not guilty of counts 38, 39 and 40 of the indictment, you must acquit him of all the charges lodged against him in the indictment.

Respectfully submitted,
Joseph B Rubin
Rosenberg Rosenberg
+ Rochmon
200 Garden City Plaza
Garden City NY 11530
Attys for Defendant
Ernest R. Mullenax

THE COURT: This is a motion by Mr. Ehrlich to strike Government Exhibit 92 from evidence. We could deal with that at some time before the close of the case. In the meantime I will have Xerox copies brought back so that we can have one for the government and one for the Court and one for counsel who has made the motion.

MR. EHRLICH: I apologize to the Court for handing up a supplemental request to charge in handwritten form. I could not get that typewritten.

THE COURT: Your first supplemental request has to do with the aspect of the failure of the defendant to take the stand. That, in proper language, will be dealt with in my charge and not in the language and detail that you suggest.

The second request seems to be a problem, raising a proper charge on reasonable doubt. If it goes beyond that to the two inferences rule, that is not the rule that is followed in this circuit.

The third request asks me to make specific reference to specific evidence as to specific defendants, and that raises the question as to whether I intend to charge on the facts or not. I certainly will not single out one defendant and charge on the facts as to him. I may not charge on the facts at all. I don't know.

If that is an invitation to charge on the facts, I will say to you that the most I will do would be to show what each side contends and, certainly, will not, in effect, direct a determination and resolution of the facts.

The fourth request, again, asks me to single out particular pieces of evidence and emphasize those, which I decline to do.

The fifth, that request asks me to charge on specific pieces of evidence and to react to those.

The sixth, the same.

The last request, again, an instruction proposes to the jury about how they should find on the substantive counts if they make a particular finding on counts 38, 39, and 40.

I have a note here now from Mr. Broderick who said he has been unsuccessful in having Michael Karfunkel appear here under subpoena. He asks me to ask the witness Michael Karfunkel to appear in this courtroom immediately.

How do you think I can do it?

MR. BRODERICK: I can't do it.

THE COURT: If you can't do it, how can I do it? Where is he?

MR. BRODERICK: I don't know. We subpoenaed

pgas

The taking of evidence is now complete. You may, therefore, go out. I have a few legal matters to attend to with the lawyers at the present time.

(Jury excused)

THE COURT: In the interests of expedition, may I say that the motions that were made at the close of the government's case are in each instance deemed to be renewed at this time. They are denied.

Is there any additional motion that anyone wishes to present at this time? Any legal motion?

MR. RHODES: May we have the right to adopt insofar as a defendant would benefit from the requests of other defendants --

THE COURT: I am not now going to concern myself with anything that has not been heretofore submitted. I have received fourteen different requests, some thick and some thin, to charge in writing, and I have painstakingly gone over all of them. I don't propose now to concern myself with any impromptu suggestions.

I will say that in the main the requests to charge have followed traditional lines, and although they will not be followed out in hoc verba, in substance they will be the Court's charge, the major exceptions being the two-inferences rule, which will not be charged.

MR. EHRLICH: Your Honor, not with respect to the requests to charge, I want the record to reflect that I renew all pretrial motions and motions made during the trial on the grounds heretofore stated.

I point out Exhibit 296-A. It is a $9000 check to Joiner which a review of the records clearly shows that from Mr. Joiner's testimony that check was solely in connection with a grant from 40,000 shares of Pig 'n Whistle stock, and there is absolutely no connection with Select or Select Enterprises, and I move that that exhibit be stricken from the evidence.

THE COURT: Is that the contention of the government?

MR. MAC DONALD: No, sir. The banker from the Kansas town accepted 2000 shares of Select Enterprises stock as collateral on a loan.

THE COURT: All right.

MR. RHODES: I hesitate to say this, but I again neglected to offer exhibits.

THE COURT: The case is closed. This is not a piece of taffy to keep on pulling apart.

We will resume at a quarter to two.

(Luncheon recess)

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AFTERNOON SESSION

(1.45 p.m.)

THE COURT: Mr. MacDonald, you may address the jury.

MR. MacDONALD: May it please the Court, fellow counsel, Mr. Foreman, ladies and gentlemen of the jury:

Historically, this case begins with Mr. Goodloe, E. D. Goodloe's purchase of 22 mica claims on a New Mexican hillside in 1964 for approximately $10,000. Mr. Goodloe was asked that question by the Securities and Exchange Commission in April of 1970 during the course of its investigation in this case and he gave that answer under oath and you may accept it as being a truthful one.

During the next couple of years, an effort to mine the mica there and sell it yielded, relative to what might later be claimed, only a few thousand dollars worth of mica. It was variously estimated by R. B. Parker Goodloe, Mr. Goodloe's brother to you, at $50,000. You may remember he testified 40 to 50 truckloads went out back in '65 at $1000 a truckload.

Earlier to the grand jury he had estimated that it was about $10,000 in '65 that had been sold to one customer, the Buckeye Supply Company.

Mr. Ed Goodloe himself, when asked about prior mica sales testified between January of '65 and the time that C. A. Morris & Company sold the property to Select Enterprises, Incorporated, it says that it produced about $5000 worth, and Mr. Ed Goodloe answered, that is correct.

In November 1968, the company that was then operating those mica claims, the C. A. Morris Company, gave a mortgage against those claims to the tune of some $50,000, a mortgage which is to this day fully unpaid and remains a lien against those properties.

In 1969, in the fall, Mr. Goodloe acquired the Comanche County oil and gas leases and you recall also that $37,500 was the total purchase price paid to Rhodes for obtaining the leases and, in that regard, you have an exhibit before you which Mr. Peterson identified, containing, in Mr. Goodloe's own handwriting, the $35,500 purchase price and the breakdown and how half the purchase price came from the Cisco Bank, Lloyd London, and half from the Atoka Bank, and you have Mr. Goodloe's signature on the loan to the bank. Peterson and Goodloe signed but the partnership was a 50-50 deal.

At about that same time, in Lubbock, Texas, James Joiner and Joe Boyd met in Joiner's apartment and discussed the acquisition of a shell corporation and the

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placement into it of assets and how to make money in that regard.

Boyd reported back within a very short time that three such corporations were available, two in Salt Lake City and one in Reno, and the one in Nevada had all of its shares intact and at about the same time Christine Smith took delivery and signed the delivery receipt from a printing company in Nevada, and you may look at that receipt and you will see that on December 6th she signed for 1500 shares of Goldfield Candelaria Cooperative Mining Company stock certificates, brand new ones in December of 1969.

At the turn of the year 1970, Mr. Boyd and Joiner obtained the first of three loans during that month at the Atoka Bank. The first one was for $5000, collateralized by Pioneer stock, which had cost Boyd and Joiner only 7000.

Now, there is a twofold importance about that transaction. You may recall that it was on the drive down from Atoka to Dallas that, for the first time, Alan Segal's name was mentioned as the person behind the Pioneer stock swindle and how Bernie Acton, the guy who had provided the Pioneer stock, was quizzed about whether or not Alan Segal might not also be available to make the

market in Select Enterprises stock.

Mr. Boyd and Mr. Joiner participated in quizzing Acton on that subject and, as a further aspect of the original Pioneer loan transaction, not a Select stock transaction, which has some importance.

You may remember that Brookshire had been requested to pay out all cash on the loan but he could only get $14,000 and the balance was made up in a number of checks and Joiner produced those checks after keeping them in a safe-deposit box and one of them traces directly to, and you will be able to see, into Mr. Joe Boyd's Midland Bank account, the $1000 check which was left over from the disbursement of the original proceeds.

That, in essence, was the seed money or at least some of the early dollars for the activities which followed in January.

On January 13 in Reno, Boyd and Joiner meet Alan Segal. Bernie Acton was present at the first meeting at the Pioneer Motel in the Sword & Shield Lounge. There Alan Segal was requested to become the market maker in the Select stock activities. You may remember they had discussions about whether or not there could be absolute protection and whether all of the stock could be locked up, so it wouldn't be around to be sold.

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The first meeting ended with Boyd to go to Bissett's offices to return later that afternoon. As you have seen, he there executed on that morning a two-page legal instrument captioned "Escrow Instructions", and we have the original here and it bears his signature and, beneath that, Emerson F. Titlow and L. F. Traynor & Associates, signed, January 13, 1970. In substance, it promises that all of the outstanding stock of Goldfield Candelaria will be delivered in exchange for $40,000 and that Roger Bissett should write an opinion letter representing to the world or at least to whoever it was going to be given to that those were all of the outstanding shares; 100 per cent was accounted for.

As you may remember, the original of that opinion letter was produced them that afternoon when Segal resumed his meeting with Boyd and Joiner and it was a letter which was later carried back to New York and the original of it was produced for the SEC later in the spring of 1970. That letter was signed on the 13th and it represented, just as the contract had provided for in substance, that 1,156,603 shares were validly outstanding and issued for this old corporation and that he, Mr. Titlow, had inspected the various certificates delivered to his office by various stockholders.

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You may remember that one of the key agreements on the occasion of that afternoon's meeting was the amount per share which would be used in making the market here in New York and how Boyd wanted it to be $15 a share and how Segal suggested that a lower price might be in order at the outset and, ultimately, the agreement was fixed at $15 per share.

I should not in passing that on the airplane ride back to New York, Marvin Rappaport was shown this for a minute or two and, as a lawyer, on reading it you may find that if he did read it, that it disclosed to him the control of 100 per cent of the shareholders in this corporation.

One week later, January 20, 1970, Bissett and Logar call up the same printing company and order, on a panic, rush basis, 2500 Select Enterprises stock certificates. That is a new name. The other one had been Goldfield Candelaria, up to that point.

2 On a panic basis, the first 500 were received on January 22, 1970, by Christine Smith once again.

On the 21st, Boyd and Titlow signed, once again, what in essence is an acknowledgment that the escrow distribution has been carried out and hat $40,000 was received by Titlow and that 1,156,633 shares were received

by Boyd for his half.

The parties were signing an acknowledgment that he contract had been carried to a completion.

You may recall the testimony about the closing, that Mr. Joiner traveled with Boyd to Reno, that they went first to Titlow's offices, walked to Bissett's offices nearby, and Bissett was in a hurry to go to Court, so Joiner and Boyd retired to the hotel room and it was later that afternoon that Boyd alone, so he told Joiner, was going back to complete the closing.

That is why Boyd's signature on this closing instrument tells the story of the receipt of the stock in exchange for the money.

You may also recall that Boyd had to go to Carson City, Nevada to file the corporate papers with respect to the corporation following the closing and those corporate papers are important in one respect:

One of them, or actually more than one but one that was stamped filed January 20, 1970, by the Secretary of State, receites that all of the shareholders in the Goldfield Candelaria Corporation have met and done certain things -- increased the shareholdings and changed the place of business and revived the corporation, and then it lists who all of the shareholders are and there are 11

people listed and E. F. Titlow is said to only own 110,000 shares and then the other people are listed as owning 110, 110, until they get down to the 56,000 to round it off and Christine Smith told you she signed it and it was notarized by Mr. Bissett, as a nominee; that she didn't own 110,000 shares of Goldfield Candelaria and, that in that regard, this document to the reader would only lead one to believe that there was no single person who owned more than 10 per cent of the outstanding stock.

110,000 is slightly less than 10 per cent of 1.156 million.

At the same time, Miss Smith's signature appears on a waiver of notice and meeting minute reciting the same thing, that there is no single shareholder owning more than 10 per cent of the stock.

You haven't seen it yet, but it arrived by mail, as Mrs. Grube promised us and that is the bills which B. H. Grube's estate maintained in which she found Mr. Grube's Reno visit bills during the course of 1970. Those bills show that Mr. Grube checked into the Mapes Hotel on January 22, 1970, and checked out on January 25, 1970.

On the 21st, in the middle of that period, Bissett rendered a first bill to Select Enterprises. The

bill recited services performed and, in that regard, listed the stock certificates which had been purchased, various corporate seals and equipment to effect the corporation, and legal fees for unspecified services, $750. If you go back to the escrow agreement, you will see that the parties agreed that the Bissett and Logar fee for carrying out the exchange, 40,000 for the stock, would be $750.

What is significant is what is not there. There is no reference to any services performed by or on behalf of Boyd for Grube or Grube for Boyd on the January 21st bill.

On the 22nd, the 250 shares have been delivered now on the rush basis and Miss Smith writes a letter to Mr. Boyd requesting $250 and she is charging -- Nevada National Registrar, the transfer agent, charges a dollar a share for each share issued, and you may remember what made up the first 250 certificates. 120,000 were to Boyd and nine other person, no one of whom appeared to own more than 10 per cent. 100,000 were in the names of Florence Glantz and Francine Zahl and you may remember that Mr. Segal had only expected 50,000 shares in New York but that Boyd had doubled the ante to make it more attractive to Segal and Segal's market making activities, and you will see that onthe 22nd, Nevada National Registrars had

a transfer sheet and it had the names of the persons, Florence Glantz 50,000, Francine Zahl 50 and, amongst the people associated with Boyd for his 120, Knisely, Joiner, Ed Goodloe, R. B. Goodloe, Selwyn Weber and Joe Boyd, W. C. Chapel and H. T. Hansen.

On January 23, the following day, we have the check from the escrow account into which the $40,000 had been paid out to Titlow as an agent for $29,250. The $750 promised to be paid to Bissett for legal services was paid by a similar check and there was a finder's fee involved.

On January 26, 1970, New York City. Alan Segal received a phone call. Joe Boyd said he was at the airport, was in town, had the stock. You may recall that Segal then maintained his offices at 61st Street and, as he recalled it, but Francine Zahl did not, Michael Gardner had been recently sharing space there, because he needed a spare desk.

Boyd came to the offices, displayed a briefcase full of stock and also a balance sheet from C. A. Morris & Company and that's the first balance sheet that Mr. Barnett did at Mr. Goodloe's request.

He did not display on that occasion any contracts for the purpose of oil and gas leases dated

January 24. He did not display any deeds transferring oil and gas leases or mica properties dated January 23, nor did he produce a copy of an oil and gas study by Mr. Harris dated January 22. He produced simply the C. A. Morris balance sheet and the stock certificates.

Segal sent Boyd and Zahl down to the vault at the Chemical Bank to get a two-key safe-deposit box and you have seen the receipt. You have seen the original of this receipt in which Mrs. Zahl prepared and listed the matters contained therein and signed on the bottom, at least on this copy, apparently after her -- it looks like the -- J goes over the top of the F, Mr. Boyd, acknowledging that 936,603 shares were the total, less the 220, which were then deposited into the box.

At that point Segal told Boyd that he needed a balance sheet for Select Enterprises, not for C. A. Morris because it was Select Enterprises which was going to be traded in the marketplace and that he had to go back and get one.

Boyd returned to Texas and, on the evening of the 26th, the day of the placing of the stock into the safe-deposit box, Segal met with Michael Karfunkel of Economic Planning and Michael Gardner and discussed the National Quotations Bureau application which should be

filed on behalf of Karfunkel's firm, Economic Planning.

Karfunkel recalled that that meeting was in Segal's office. Segal recalled that it was at P. J. Moriarty's, a nearby bar, which I think he said in answer to one question was his second office.

It is really unimportant where it was. It is what was said that was important, because it was unlawful. Just like John Wells, three months later, Michael Karfunkel three months later agreed to trade the stock of Select, if he was protected.

Question: What if anything did you, Alan Segal, and Karfunkel discuss concerning the delivery to him of Select stock certificates for market making purposes?

Answer: I told Mr. Karfunkel if he opens the stock that I would cover him on both ends, which means that I would supply him with stock if he needed it and I would take whatever stock he had if he was loaded.

Gardner, who had previous experience in the securities business, listened to that unlawful agreement and you may find from further evidence later took advantage of it by his own transactions in Select stock.

Karfunkel's firm, by the way, refused, and you may remember this, to be the first one into the sheets.

His boss said if somebody else went in first he could then go in and trade. He did preserve the original application and the original was in the file of the National Quotations Bureau, that he had filled out that night, and there is a mention of a dollar a share price which was considered to be an opening round that would determine whether there was any stock in the woodwork that might be happy to be sold at a buck -- consideration which was rejected when Karfunkel's firm deferred to somebody else.

Now, Boyd's return to Texas, and on January 27, 1970, he and Selwyn Weber go to Elm's office. Bill Elms was the accountant in Odessa who had an office in the same bank building as Mr. Weber. Mr. Elms, and this is the only original that I have in my pile, made some notes of that discussion. Those notes ae quite revealing.

Mr. Elms, you may find, had, and to this day has, little motivation to have told you something that wasn't so and, furthermore, on January 27 had little motivation to do anything other than to make notes of what was going on and, on that occasion, his notes show that three acquisitions were discussed -- the acquisition of the mica mines, C. A. Morris, $19 million, the figure, and you recall that on January 20, Mr. Barnett's balance

sheet was out and around and that's where that figures matches up to.

The second acquisition, and that one is 2[illegible],667 share block of stock for the mica mines.

The second one is for the Grube properties, South Midland Development, and South Midland Commercial, for 66,000 and the third for Mr. Goodloe and the oil and gas properties, estimated at $5 million.

What is not here, and that is really what is most significant, is the Patio Building. You will later see, if you haven't already detected in reading, a board of directors meeting minutes which purports on January, I think it is the 24th or at least a day or two before the 27th, to have authorized the sale, the purchase of four assets into Select and the fourth one on the bottom is the Maxson property, the Patio Building, and it is not listed and was not discussed by Boyd and Weber on the 27th in Elms' offices.

There is further evidence that that acquisition was not even yet being talked about as late as January 27. You may remember that Elms rejected the notion of his doing anything other than being a bookkeeper. He didn't want to certify any balance sheet but he would be willing to bring the books up to date and he signed a letter to

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that effect and Mr. Weber picked the letter up, or it was delivered to him later that day, and it was stipulated, and the stipulations came fast and furious, and I want to call a few to your attention, that off of the same typewriter in Mr. Weber's offices came the first Select Enterprises balance sheet.

These are my handwriting and notes to myself, on this document, and are not part of the exhibit.

You have seen this. This is the January 27, 1970, non-certified, non-Barnett balance sheet, single page, that was distributed widely in New York City on the days that followed.

This one, unlike Mr. Barnett's earlier balance sheet, said that the properties were carried at fair market values. You may remember that the C. A. Morris balance sheet, like the second Barnett effort, said not necessarily fair market values and warned the reader. This one neglected to carry that warning.

This one also, this one here, does not list the Patio Building and this is dated January 27, several days after that board of directors meeting minutes.

At the same time, Knisely's first report to the board of directors lists recent acquisitions and yet it does not talk about the Patio Building, either.

Also January 27.

On the 28th, in New York, Boyd returns, provides Segal with copies of these materials that we have been looking at and Stanley Schleger is in attendance for the first time. Schleger is Mr. Segal's accountant and, privately, Schleger says to Segal, not in Boyd's presence, "This balance sheet looks ridiculous; $25 million in assets and less than $100,000 in liabilities."

That afternoon, nevertheless, at the Regency Hotel, Michael Gardner and Joe Boyd meet with some financial public relations consultants and copies of these materials are distributed at the table and Stuart Schiffman and Alan Segal stand by at the bar because they don't want to show their faces at the table, and discuss among themselves Karen Company going into the sheets as the first market maker.

While Boyd was in New York, or before he left for New York, he asked Jim Joiner if Joiner would have someone, Bruce Baker or a friend of Joiner's, travel to Atoka, Oklahoma, and sign a note for a $22,500 loan.

"We need more money."

There is in evidence the Bruce Baker note for that amount, January 29, when he borrowed $22,500. And, the collateral for that loan is listd there as being Select

Enterprises stock, held in the vault in Oklahoma. The significance of this loan, well, it's twofold. First of all, Boyd got half the loan proceeds, at $11,000, and we will look at the checks in a moment but, more fundamentally, the significance is the location of the stock in Select Enterprises in a vault in Atoka, Oklahoma.

Remember, now, that you have not had an accounting of 100 per cent of the shares of Select Enterprises that came off of the printing presses in Reno, Nevada, nor 100 per cent that came off of the transfer agent records nor, indeed, 100 per cent that came off of the second transfer agent or maybe, finally, the loose stock certificates which Harrelson produced and although it was in the pile before him, you may remember that he cleaned out the desk and you can examine what he found and he found the corporate seal and a telephone book that contained all the phone numbers of the persons who were talking to each other and he also found several hundred blank Select certificates and I guess there are also some notations of some that he had been issuing, perhaps, to friends.

On January 29, 1970, Boyd gets back to Texas and meets Joiner at La Mesa, the cafe, with Mr. Boyd's wife, with someone else at a nearby table, and Joiner and

Boyd discussed the activities to date and, at that time, Boyd displays a contract to the oil property. Not a deed, mind you. A contract dated January 23, and not an opinion letter dated January 26, three days earlier or nine days earlier, respectively, but a contract. There is only one contract for the oil properties and that is an exhibit which bears a date, Januay 24, and we have to remember now the days of the week.

The 23rd is a Friday, the 24th is a Saturday, the 25th is Sunday and the 26th is Monday. Mr. Ford thought the 26th was a Wednesday but he was reminded that it was on a Monday and you may recall his testimony that on Friday the 23rd he issued a deed to Goodloe transferring the mica properties and the oil and gas properties to Select Enterprises and that on Monday the 26th he was asked to write an opinion letter about whether Select really owned those properties and that he didn't know anything about the contract, as opposed to a deed on the oil and gas properties. He didn't recognize it.

Well, the stipulation about this document was that it was also prepared on Selwyn Weber's typewriter and it is dated Saturday the 24th and it promises by and between Joe Boyd and Ed Goodloe and signed by Weber as a witness, that each of the parties will agree to execute immediately,

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as called for, further conveyances.

What does that mean, practically speaking? You may remember the testimony of somebody, Mr. Ford, I guess, that ordinarily in transactions you sign contracts first, you promise to deliver the purchase price and the deed at a future time and then you spend the interim getting your money togetger and your deeds in order and then you have a closing.

Well, here is a case where if you believe the January 23rd date, the deed was delivered before a contract was ever signed and then the next day the parties signed a contract promising to deliver a deed which had already been provided. You may find that the significance of this date is that on the 24th this contract was prepared and it was the only agreement concerning the oil and gas leases and, as Joiner remembered, this was the only agreement displayed to him on the occasion of his meeting with Boyd the following week.

Boyd also reported his progress in New York and how Segal had promised to be opening up the market shortly and, the following day, the $11,000 in cashier's checks, flowing from that first Select stock loan into Boyd are in evidence and you will see that they are later deposited, first of all, into Boyd's Midland account which he kept

in his wife's name, Carolyn Boyd, and then immediately, $67,500 was taken back to Atoka and that money was disbursed and the checks of each disbursement are in evidence, through the following 30 or 40 days and you will see the interesting story the money uses of Select Enterprises tells.

February 4, 1970, New York City, Stuart Schiffman delivers the pink sheet application to Karen Company, where Mr. Azzarone oversees its preparation and it gets filed with the National Quoation Bureau. It was signed by somebody else but, Azzarone was the person whose name was printed beneath it.

Now, you recall, I am sure, the direct inside testimony of Mr. Azzarone that he was working for Edward Vanasco, the defendant, who was an undisclosed principal or owner of Karen Company and Azzarone said it was a 40-40-10-10 split in theory for profits and you recall the direct outside proof from Mr. Schiffman and Mr. Shwidock who were associated with another broker-dealer and they told you that they had spoken from time to time with Mr. Vanasco about mutual business transactions or proposed transactions between their two firms and Vanasco was talking on behalf of Karen Company.

You recall the further testimony of Mr.

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Azzarone that Vanasco mainly, and I emphasize that word because I am quoting the transcript, chose the stocks to be traded by Karen Company. But that does not mean that other traders employed at Karen Company or that -- let me go back one step -- Vanasco mainly chose the stocks that were to be traded. Others traded, persons who worked there, could also choose stocks for trading as well.

Now, Vanasco can't duck responsibility for Azzarone's going into the pink sheets in this case because Azzarone occasionally had stocks on his own because all of Azzarone's authorities stemmed from Vanasco. Azzarone would still be in Worcester, Massachusetts, although he has now returned there, but in 1970 he would still have been there if he hadn't received authority from Vanasco to come to New York and open up Karen Company as Vanasco's front man.

February 4, 1970, Moriarty's Bar. Danny Anfang meets with Alan Segal and Stanley Schleger. Segal says to Anfang, "Please put your customers in the stock, it's a great thing", and Anfang complied and shortly after he started to do that and, of course, the customers didn't obtain one per cent of the information which they were entitled to have in making a judgment about whether to speculate or invest or whether to be conservative or

whether to be risk taking.

In passing, February 9, 1970, Roger Bissett writes a letter to Select Enterprises. He says, "Pursuant to Mr. Boyd's instructions, I am enclosing billing for Goldfield Candelaria-Select and the revised billing is here."

It is now dated February 9, 1970. It reflects the same $750 escrow fee, the same disbursements for stationery items and still does not mention anything about Grube contracts. February 9.

The same day, in New York, trading begins. One of Anfang's customers spends $1650 to buy 100 shares.

On February 10, the following day, in Midland Texas, Joe Boyd and R. C. Maxson, each purchase shares of Select Enterprises. Maxson 10 and Boyd 50.

What is the relevance of Boyd's buying 50 shares of Select Enterprises? I suppose Mr. Segal may say that that demonstrates his belief in the genuineness of the marketplace.

I cite it at this point because I will tell you that in April, when asked bout his market, his knowledge of the brokerage market in Select stock, Mr. Boyd perjured himself concerning his description of what he knew had been going on. He didn't even disclose his

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50-share purchase. It was at this point that Boyd had moved into the Patio Building as a renter and he shortly thereafter proposed to purchase from Mr. Maxson outright the entire building. Maxson wanted a cash deal.

On the 11th in New York, Gardner and Karfunkel agreed to a $8000 loan transaction secured by 1000 shares of Select stock that Alan Segal would provide, one of those Francine Zahl certificates. Segal, on that same day, went up to Rappaport's offices and there delivered 3000 shares of Select stock to Mann & Company, to the president of that company, and told him, "For goodness sake, don't sell them but you can use them to make your books balance."

On that same day -- it was a busy one -- Francine wrote a letter to the transfer agent on behalf of Allen Grant, the furier who was making phone calls for everyone, asking that one of her certificates be reissued in Allen Grant's name.

The following day Mr. Gardner introduced Segal to a new broker at Devonshire. They went to dinner and Segal opened an account.

On the 13th a check for the Gardner loan comes back. It is delivered by Gardner to Segal with a request that Segal help him cash it, and Segal sends Francine down, or his chauffeur Torres, to cash the check, and the other $5,000 is there for delivery to Mr. Gardner.

You will recall after the testimony that it took several days for the additional checks to make up the $8,000 total for that loan, and of those additional checks the same procedure was employed in cashing them: $500 in cash was delivered to Gardner and the $2500 had been telegrammed off somewhere.

You will also recall that Francine Zahl did not remember cashing any of these checks for Mr. Segal or sending off those particular wires.

A moment ago I called your attention to the letter going out to the Nevada Registrars for Allen Grant. There

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are many mail counts in the indictment. You may examine the correspondence file to see the letters that correspond to those mail counts. There is a more important reason for raising the Allen Grant transfer. When you go to the transfer records for Grant you will find the certificates are issued. If you go back to an earlier time in the transfer records you will find the proceeding certificate, 1751, and you will find that that is the last certificate that was issued on January 22, the day when the whole 250 shares were issued to Mr. Boyd when he went off to New York. There were no intervening issues of stock between January 22 and February 16.

On February 17, 1970, Joe Boyd pays the Patio Building first month rent. Mr. Maxson identified the check and the deposit slip which he put into the bank, and he also testified that it was some days after receipt of that rent that he signed the contracts for the sale of the Patio Building. You may find that it is a good and sufficient reason for someone considering selling their building to await the receipt of three weeks' arrearage in rent before signing a contract to sell the property to some person. Mr. Maxson's recollection, you may credit, on the basis of it being unreasonable for a man to sell his property to someone who is not even paying his rent.

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On the same day, Abilene, Texas, Mr. Brinlee and Mr. Goodloe and Mr. Ford meet. They sign a long contract for the California land. The last attachment to that concontract is an appraisal on the California land by one Thomas I. White, September 8, 1969. Although you have not heard this yet, the testimony in April before the SEC, those transcripts are available to you, and I and the other lawyers will make reference to what the testimony was; we may actually read questions and answers, and you may call for those transcripts or, you may even call for any of this trial testimony in the course of your deliberations, to have it read to you, and you can study the exhibits as well: You can take the exhibits into the juryroom.

Back to the Thomas I. White appraisal. Brookshire testified before the SEC. He was called down to Houston and it was discovered that White had died several days before the September time he is supposed to have signed this. Boyd testified that in his investigations he thought White was still alive, but there was something else wrong with it so he rejected the proposal out of hand as well. That's the first $250 appraisal for the California property.

On that same day Boyd's 50-share purchase from the previous week of Select stock, his confirmation slip was given to Brinlee and Vinson of evidence of the $17

a share trading price which he was willing to pay for that stock.

On February 19, 1970, back in New York, the third outside broker-dealer, a Mr. Schneiderman of E. F. Henderson and Company was solicited to enter the pink sheets, and he did, on behalf of and to make a market in Select Enterprises. He identified Edward Vanasco as the person that called him up and solicited him to enter the sheets. He also said that Vanasco sent over that day the January 27, 1970 balance sheet, rudimentary entry one, the elementary one, with the fair market representation -- or misrepresentation -- and not any Riverside or Diamond Brothers contract. This is February 19.

Later Schneiderman did receive those contracts on the morning of his SEC appearance here in New York and falsely testified that he received all of the documents at the same time instead of distinguishing between what he had when he went into the market and what he had on the morning of his appearance before the SEC.

Friday, February 29, 1970, Dallas, Texas to Atoka, Oklahoma: Joe Boyd drove with William Chapel and Mike Bickel from Dallas to Atoka for the purpose of picking up 300 shares from the resting place of Boyd's controlled shares. Bickel and Chapel delivered this stock to their

bankers to forestall collection efforts on a $15,000 loan that they were behind on.

In New York City Alan Segal got wind of the SEC investigation and got on the telephone and tried to locate Mr. Boyd. He located Joiner. You may recall the conversation. First of all, "Why doesn't somebody answer the phone at the Patio Building? What happens if the SEC calls in the middle of the day and nobody answers the phone? Where is Boyd? Do we have the documentation in order? Can we stand an inspection?"

Segal called Bissett's office and spoke to some gentleman there and was told everything was in order.

He spoke to Mr. Titlow's secretary and she thought that everything appeared to be in order, but she had no holds on the stock or stocks.

Later that afternoon Segal went upstairs to Rappaport's office in the same building and told him that the SEC had jumped in, and Rappaport recommended that Segal hire special SEC counsel.

The following day, Saturday, in Los Angeles, Brinlee and Davidson and Goodloe sit down to discuss the California land. It is agreed that the price would be five million dollars worth of Select Enterprises stock for that land which was later put on the balance sheet at

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$25 million, and that a down payment of $50,000 was promised for delivery the following week. I say it was agreed. There was a contract to that effect. It recited five million dollars as being the bargaining price. It recites $50,000 down payment and that the following week would be sufficient to bind the deal.

P.M. 2-2-

That was the George Washington Birthday weekend. It was a three-day weekend. On February 22, a Sunday, Mr. Segal got a phone call from Mr. Rappaport who had an idea. They discussed the idea. It was that they controlled the Riverside Hotel between them. Remember, Rappaport was Segal's nominee, and it would be a simple matter to transfer that asset into Select Enterprises; and, in addition, the Diamond Brothers Furniture Company might be transferred readily. So they met to talk about that.

You recall also that at the same time frame Mr. Segal telephoned Mr. Boyd, located him in Reno, and has to give him 12 names of nominees whose names could be used to make the stock transfer list look like some stock trading had been going on. Remember now, up to this point, Allen Grant's shares were the only ones that had been issued on those stock transfer records, and if the SEC went in on Friday, the 20th, with this trading, and found only the Allen Grant entries, it would look like something was up.

At the same time Joiner and Chapel were solicited to give nominees and Chapel gave nine and Joiner seven.

Towards the end of the week then, or on Tuesday morning, Sherman, Rupe, and Segal met and discussed the transfer of the Diamond Brothers Company into Select Enterprises and also discussed giving Fred Sherman 15,000 shares of Select Enterprises so he could give those shares to Iselin-Jefferson.

You may recall that the man from Iselin-Jefferson told you about dictating a memorandum to the file. I would like to read this: Both Fred and his attorney assured me that there is a strong possibility that this sale would be consummated and that approval had been tentatively given to allow Select to make available to Fred approximately $200,000 to $250,000 worth of registered stock of Select at market value which Fred will, in turn, pledge to us as additional collateral for our loans.

I can't resist reading the next: I told Fred I would continue to advance the funds necessary to meet his payment requirements this week pending completion of the deal with Select Enterprises, and I would make no commitment whatsoever regarding the future handling of Diamond Brothers account.

This representation by Mr. Sherman and his

attorney did not disclose that six weeks earlier Mr. Rappaport had read a letter which said in substance that 1,156,603 shares of old stock, unregistered stock, was what was under control, but rather they promised to deliver a conveyor of 1,000,000 of registered shares to Mr. Sherman.

On the 24th, in Reno, Mr. Boyd is there and he signs checks and delivers two of them. One is to Bissett and Logar for the unpaid legal bills, and one is to the Nevada National Registrar for the original 250 January 22 issuance of the first block of stock.

The Chapel-Joiner-Segal nominee list of names appear on a transfer sheet which has a typed date of February 19. That is, of course, one day before the SEC inquiry began. A letter from Christine Smith to Select Enterprises asks for payment $38 for 38 certificates for issuing those shares on the 24th, Tuesday. Count the names, and the 38 people provide 38 certificates which Miss Smith says were issued on Tuesday, the 24th. Why are theyback-dated to February 19? Let's see if we can see other similar requests for that timing.

At or about the same time in Abilene, Texas Mr. Goodloe requests of Mr. Barnett aid in preparing the balance sheet, the first Select Enterprises proforma balance sheet, and that balance sheet had a cutoff date of February 20,

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1970. There is no proof that Mr. Barnett was told of the selection of that date for any special reason.

On the 24th, Christine Smith writes a letter to Bissett saying, "I'm going to prepare you a stockholders' list with the cutoff date of February 20th."

Now we come to the next share certificates of sequence. Remember, we stopped after 39 shareholders' holdings. I didn't call it to your attention but 1799 was the 38 share. 1762 was the first one after the Allen Grant, which was 1761, and it runs sequentially through 1799.

1800 is a huge block to Mr. Grube, trustee.

1801 is the same size, 66,000, to Ed Goodloe, trustee.

1802 is Ed G-odloe, quarter of a million shares.

These are the blocks which were issued not on January 25, as was originally typed on this document, but from the sequential numbering of the shares on or after February 24th for the purpose you may find of supporting the January 27th balance sheet which claimed that these transactions had been accomplished or completed by January 27.

Miss Smith recalled only one such occasion when she issued shares out of sequence in such a fashion. She recalled that she thought it was either Titlow or Boyd who

instructed her on that occasion.

The share sequence then continues with the following sheet, February 24, and you may find that examining the numbers, except for that one sheet, the sequence follows natural from the beginning of the issuance on January 22 until the Nevada National Registrar stopped issuing in April.

We had February 25, Midland, Texas: Mr. Maxson executes two contracts which demonstrate Mr. Boyd's intention to avoid the laws, the registration requirements.

2-4 Contract number 1, signed by Knisely and Maxson, provides, in substance, that Mr. Maxson can get 23,333 shares of restricted Select stock for his Patio Building.

Contract number 2 is between Boyd and Maxson. Mr. Maxson will be given 15,000 shares of Boyd's stock unrestricted which can be used to give to a bank to make a loan, which monies will be able to be forthcoming to pay the cash Mr. Maxson is looking for, and shares will rest at that bank until the loan is repaid, unless Karen Company, at their main office in New York, ever quotes the stock at less than 10. As soon as the market price drops less than 10 then anybody who holds the stock can dump it on whoever happens to be buying it at that time.

That series of contracts shows Mr. Boyd wanted to

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avoid the registration requirements by issuing unregistered shares which would be placed at banks for loans to raise money to further his activities.

The same day in New York City Mr. Sherman has been to Chicago and returns. He has supper at the Regency Hotel. Michael Gardner is there but doesn't contribute anything because Segal, Rappaport, and Sherman are doing most of the discussing about the Diamond Brothers contract.

Earlier that day Mr. Gardner's friend, Danenza, at the Forsite Fund had completed selling short 800 shares of Select stock and Segal had learned of that, and he had told Gardner that such disloyalty would be stymied because the Gardner nominee names that he had submitted for shares earlier, those shares would not be forthcoming and he would not give them to Gardner and Gardner would have to go out in the market place and cover his short and buy the stock on his own.

So that night at supper Mr. Sherman agreed without bargaining to sell the Diamond Brothers Furniture Company for 500,000 shares of Select Enterprises. There was an all night session. At breakfast Mr. Sherman signed the Diamond Brothers contract dated 23 days earlier, February, before trading begins.

Later that morning copies of that contract, to-

gether with the one Rappaport himself signed for the Riverside Hotel, were delivered, as Stuart Schiffman thought, to Karen and Company by Mr. Rappaport personally and to Michael Karfunkel by Alan Segal's chauffeur. You will recall Mr. Azzarone's testimony as how he took these contracts to the SEC and falsely told how he got them from the company a couple of weeks earlier or before his first entry in the pink sheets. You will recall how Schneiderman received his copies from Mr. Vanasco or from a runner and falsely told the SEC he received the whole file from someone named Joe when he first went into the market place.

February 26, 1970, Reno, Mr. Goodloe now breaks down his 266,670 share block so he might have available to give to the guys in California the promised down payment of 50,000 or 60,000 shares, and also to give to Mr. Joiner, so Joiner can use in his corporation Imperial National, which he had been buying property and Select stock, to get those properties from their respective sellers.

February 27, Friday, a telegram is received, Nevada National Registrar's. It is sent by Knisely and it says in substance: You are authorized to issue 266,000, and the other large block, to Goodloe. I guess this was a month to the day from the original balance sheet representing the acquisition of the Mica Mines and the oil and gas

properties for those stocks.

March 1, Sunday, Dallas, Texas, Alan Segal flies in and meets Mr. Knisely and Mr. Boyd in a hotel room and there the signature that is needed on both the Riverside and the Diamond Brothers contracts is obtained. Mr. Segal told you he might have turned his back after signing, but you may compare Knisely's signature on those contracts with the other numerous Knisely examples, and you will determine that he did sign it on that occasion. Copies of those contracts with both signatures were given to the SEC later at their Texas office.

The following Monday, back in New York, Marvin Rappaport is met and there is a delivery of 15,000 shares together with a copy of the old balance sheet and a copy of the Diamond Brothers contract.

On that date Mr. Karfunkel went to the SEC and falsely testified that pursuant to instructions, after talking to Gardner and Segal, he had received this balance sheet from Knisely and Company and not from Segal.

On that same day in Reno Mr. Grube was at the Harris Hotel. We have proof of this from the bill that Mrs. Grube sent us. It shows that he checked in on March 2nd and checked out on March 3rd. At the same time Joe Boyd cashed a check at the Harris Hotel, a draft drawn on

the First National Bank of Atoka. That was the same source of funds where it started out in February.

Those two items of evidence which place Mr. Grube and Mr. Boyd in the same hotel on March 3, 1970, are to be read in conjunction with Mr. Bissett's invoices, legal services. One is dated March 16 covering the period February 9 through March 13, 1970 -- not any period prior to February 9 but two bills have been issued: Legal services rendered.

The first service is rendered during that period, SEC matter; the second one, stock transfer matters, and there were certain stock transfer matters; the third one, the Grube transaction; the fourth one, the Tonopah extension, the fifth one; Goodloe and Hale stock matter; the sixth one, Riverside Hotel matter.

The Grube contracts, one of which is on a Bissett and Logar set of legal stationery, are dated January 23, 1970. There was a stipulation that the other versions of the contract, the second version like the Maxson case, the parallel version which does not have the Bissett and Logar letterhead, was nevertheless typewritten by the same typewritter that typed the first one.

You may find that Mr. Grube and Mr. Boyd, both their signatures appear, Mrs. Grube identified Mr. Grube's

signature, signed this agreement sometime in the time period February 9 through March 13. It was probably on the day they were both at the Harris Hotel on March 3, 1970 and dated it back to January 23, 1970 for the same reasons you have seen, that is to make it precede by several days the January 27, 1970 balance sheet.

This contract is also a demonstration that Mr. Boyd intended to and had the aid of lawyers, Mr. Bissett, in carrying out that intention to avoid the registration requirements of the law.

Once again Mr. Grube is promised 66,677 shares of restricted Select stock for his property, and once again in the side agreement Boyd promises to substitute Boyd stock share for share for that stock so that a loan could be obtained and that the monies could then be used. Once again there is a provision in which in case the stock ever gets below $12.50 it is every man for himself and buyer beware. It can be dumped on the market place. That's not restricted stock.

The following day, Tuesday, in New York City, Mr. Anfang falsely testifies at the SEC that he received the January 27 balance sheet and the Diamond Brothers prospectus, or a copy of it, from Stanley Schleger at the Longchamps Bar in the Empire State Building when, in fact

and in truth, he had gotten the top document from Alan Segal at P. J. Moriarity's with Stanley Schleger simply having been there. He left Segal's name out, just like Schleger would so when Schleger testified later -- we will come to that -- when Schleger testified about the Diamond Brothers prospectus. Schleger, at that point, described it as having been with him as a matter of simple curiosity.

March 3, 1970 Abilene, Mr. Ford's office: Mr. Barnett is working, trying to finish that first proforma balance sheet that Mr. Goodloe has requested. Brinlee and Vinson come in with Boyd and they sign a letter concerning the California land deed. That's the letter in which the recordation of those days is referred to and also the title insurance policy being forthcoming is referred to.

The following day Mr. Goodloe, on behalf of Select Enterprises, on the Robert E. Ford letterhead, signs the letter to Mr. Maxson in which he recites that we have received recently the deed on the Maxson Pation Building in March and not back in January, and that you are to receive 23,333 shares of Select stock, and that until that time -- I will read the provision:

It is understood and agreed that the warranty deed will not be filed in Midland County, Texas until the stock has been delivered to you in accordance with this

contract entered into by and between the company, which contract calls for the completion of a financial agreement to liquidate the present obligation on the building.

You may find that that is a reference to the double contract arrangement to make a loan to use the proceeds to pay Mr. Maxson the cash.

It is also pretty contemporaneous proof that as of March 3 there had been no recordation of the deed on the Patio Building which was in the board of directors minutes said to have been authorized back in January.

Here's a copy of the deed itself which Mr. Maxson said he signed at the time he received that letter, and it is, of course, backdated to January 28, 1970.

The following day, March 4, Mr. Barnett delivers the first Select Enterprises balance sheet, the proforma. This is the one which carries Select's version of the figures that appeared on the January 27 balance sheet, the $19 million Mica figure was identical; the $5 million oil and gas figure was identical. There was a reduction for Grube and Company. We will talk more about the disclosures of this balance sheet when we discuss the differences between it and the certified balance sheet.

The following day, Thursday, the 5th, in New York, Forsite Fund finally covered that short sale purchase by

going back into the market place to buy the shares.

In Abilene, Texas Mr. Joiner picked up 60,000 of E.D. Goodloe stock at Ford's office, signed a receipt, and he takes those shares to Nevada where it was turned into Imperial National Shares to be put to the uses of that corporation. That receipt ended up in Mr. Bissett's files, which are available to your examination.

Monday, March 9, 1970, Mr. Boyd, for the first time, is called in on the carpet by the SEC at their Fort Worth regional office. He appears there accompanied by a lawyer, Mr. Weber, and he takes an oath to tell the truth, and then proceeds to falsify many matters in respect of his activities for Select Enterprises.

First of all, he was asked what he knew of the public market for Select Enterprises. He says simply he had made two phone calls to Odessa or a Midland stock broker for a quote once. He didn't reveal, as I mentioned earlier, his own purchase of the shares from a Dallas broker, the confirmation of which he had been giving out to the California land sellers.

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Of course, he didn't reveal that he knew that in a locked box in New York 926,000 or 36,000 shares of stock was sitting there, that Alan Segal had 100,000 shares to make a market in the stock, but instead claimed that there were 400,000 shares of Select Enterprises stock held in the hands of the old Goldfield Candelaria shareholders, left over from 1910, that it was sitting in their attics or desk, or basements and that he had only gotten control of three-quarters of a million, 750,000 or thereabouts.

It was specifically asked if he had placed any shares with Alan Segal or if he had ever heard of Francine Zahl and he denied either fact when asked. Then he came to the mica properties, page 29, question -- or I guess this is the middle of the answer:

"Mr. Parker Goodloe has ran these properties before. He is up there actively producing now. We have our market set up for what we produce. Primarily, the mica we are producing now is for oil field mica.

"Q You were actually producing?

"A We are actually producing, yes, sir. Yes, sir. That takes care of that."

"Wait a minute. No, it doesn't. At what

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rate is it being mined and produced?

"About 20 tons per day.

"How profitable is that?

"That is profitable to something like on the order of $50 per ton net to the company before taxes but after operating. We intend to increase that production.

"Do you have any production reports?

"No, sir, I don't have. We intend to increase that production. We have a market we think will substantiate around 200 to 300 tons per day.

Is that property valued at $19 million?

"Yes, sir."

Then, later:

"I think the mica has just delivered its first load very recently, but it is in operation at this time and is producing.

"20,000 tons a day?

"20 tons a day. 20,000 is quite a bit.

"20 tons, a net of 50?

"Yes, sir.

"When did they go into operations?

"Mr. Goodloe was up there through the month of January. We had no electricity out there. It has

several hundred large electric motors we purchased.

"My question is, when did you begin production?

"I am trying to answer it. Some time during late January.

"Has it been in production each working day?

"Well, sir, I am not there. I don't know. The production is there. I discussed it with Mr. Goodloe a few days ago. He says we are now in production. We are averaging 20 tons a day. I have the market, and so on. Mr. Goodloe is a good man in whom I have great confidence.

"What contracts does Select have, if any, for the mica that is mined and produced?

"The contracts it has" --

MR. SEGAL: Objection, your Honor.

Sorry, your Honor, to interrupt. I don't know what the citation is on this.

MR. MacDONALD: Page 48, line 6.

MR. SEGAL: That doesn't follow.

THE COURT: You may proceed, Mr. MacDonald.

MR. MacDONALD: "Q What contracts does Select have, if any, for the mica that is mined and produced?

"A The contract it has with some oil well

servicing company in the Midland-Odessa area and these come out of the Houston area. I do not them. I did not make them but I do know that we have a large market for this type of thing in talking to people in the business.

"Do you anticipate producing more than 20 tons a day?

"We anticipate between two and three hundred tons a day.

"When?

"We are working up to it no. I believe we will be between two and three hundred tons prior to the expiration of 90 days from today. Our present equipment, when we get some more screens to screen this material and size it, our present equipment is capable of doing about 500 tons a day. We don't think the market will take 500 tons. We think we can have from two to three hundred tons per day."

That evening, at the hotel, Mr. Joiner, Mr. Boyd, Mr. Chapel, Mr. Weber and Mr. Bickel discussed the days's events. You may recall the testimony in which Mr. Joiner said that Joe Boyd said that he had taken care of the SEC matters and how Joiner privately asked what he thought and he wasn't quite so confident. But, there

was some work to be done.

Boyd and Segal then have a telephone call and they discuss Boyd's having said to the SEC "I told them that I had 750,000 shares and there were 400,000 shares in the hands of the old shareholders and I need to get into that locked box and get the 700, or what the difference between the 120 that I now have and the 750,000, and get it out to Nevada quickly and make the transfer records appear to support my testimony."

That same night, Joiner and Bickel and Boyd discussed a million-dollar insurance policy and the following day Boyd and Joiner sign up. Select is the beneficiary and one million dollars is taken out and, of course. you remember from the testimony from the American Founders Insurance Company that Bickel was at that time indebted to them for some large amount.

Before going over to Bickel's that morning, Boyd displayed at the Holiday Inn, where he and Joiner were staying, the contracts and documents which he had collected up to this point. He had the Diamond Bros. contract. He had the Riverside contracts. He also had the Grube contracts.

I just want to remind you at this point that this is the first time Joiner has been permitted to see the

Grube contracts. They had not been displayed to him at the Lamesa, Texas, January 29 meeting, even though that was six days after the date that appeared on the top of those contracts.

Friday the 13th, March, 1970. Mr. Boyd comes to New York and Mrs. Zahl and Al an Segal give him access to the locked box and he goes down and takes out the shares and goes to Reno to make sure the transfer records there conform to the story he had told. Segal produced for you some original letters and transfer records that he had been provided by Boyd in respect of the transfer agent's answering the SEC's inquiries during that time frame.

It is an interesting list, the people whose names are used for the 750,000 shares. It is headed off by Robert Ford, Jim Joiner, Sam Hale, M. S. Knisely, Joe Boyd, Myron Bickel and some others. It totals up to some 650,000 which, when added to the 120 that he had gotten in the first instance, come up to nearly the amount that he testified he controlled.

Chapel also described to you how on or about this period of time, March 16, he prepared a draft acquisition agreement between his company, EMS, the one he controlled with Bickel, and Select Enterprises and how that draft acquisition agreement, how the sales price was

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derived in an odd way. First of all, $15 a share was taken as the projected price that it should appear to evidence and then a cash flow representation was made in an attached letter so that the value of the EMS company, which had some office furniture and very few assets, would be or would appear to be substantial, would appear to be several hundred thousand dollars, and you may find that it is telling to have this similarity of contract arrangements being done in Texas, in mid-March, to the contract arrangements which had been perfected more rapidly in February in New York.

Chapel then goes to Atoka, signs a note for twenty-eight thousand some hundred dollars. You may remember that Boyd told him this money would save Select. Once again, stock in a vault is said to be the collateral for this $28,000 loan, not one penny of which did Chapel touch or receive, not one penny of which is shown to have been deposited into the account which Boyd had been employing up to that point and spending on behalf of Select Enterprises; that was the $6700 deposit in early February.

Okay. The next week a series of writings appear from the documents that Harrelson found which Mr. Joiner identified as setting forth a 21,000 share block of Select stock being given to a Dallas, Texas bank by a guy

named Carver, two or three steps removed from Boyd, the stock was in Boyd's name and how Joiner got 5000 out of the proceeds of that pledge arrangement. He didn't give any of the $5000 to Boyd. He spent it on himself and Sam Hale.

March 26, 1970. The Ford building, what has been referred to as board of directors meeting. Mr. Boyd was there, Mr. Knisely was there, Albert Hanson was there, Chapel was there, Ed Goodloe was there, Selwyn Weber, R. C. Maxson and Mr. Ford, at least up until the rehearsal.

Ford had prepared two title opinions for this meeting. Just as he testified, in the deposition in March of 1972, a deposition which I am sure he regrets having given and which I am sure at the time he gave he never thought would be read to a grand jury or read to this trial jury, there is internal and external evidence of the backdating of those contracts aside from his sworn admission to that end.

First of all, internally, Mr. Joiner was not shown any title opinions back in January, on January 29, at the Lamesa restaurant, three days after January 26 and nine days after the date of the deeds, Friday the 23rd.

They were only seen by Mr. Barnett in the month of March in the course of preparing the certified

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audit. They had not been seen by him at any earlier time in his work.

Internally, I put a paper clip on mine, but you can find it in the original, if you go to the January -- there are two deeds -- on the oil and gas properties which bear, purport to convey the oil and gas leases to Select. One of them has the single notarial arrangement by Mrs. Wilson and the other one has a double one that she was asked to do a second time. Perhaps on some later occasion, like Mr. Ford admitted with the notary in the airport in Los Angeles and, in any event, there is an attachment that is referred to. The attachment is the description of the oil and gas leases being conveyed and that attachment is plain, it is plain that the attachment is nothing more than a cut off version of Mr. Ford's opinion letter.

The opinion letter dated Monday, January 26, 1970, if it was truly prepared on that date, would not have been in existence on Friday, January 23, to tear up and staple on to the deed.

It is internal evidence that at least whenever this thing was signed, it was at least after the opinion letters themselves had been prepared and torn up in this fashion.

In addition to the dating and the misrepresent-

ations in that record, you should note also that in the mica properties and also in the oil and gas property, Mr. Ford did not disclose anything in respect of there being any liens or claims or mortgages against the properties which he said it is my opinion that the captioned mining claims are owned by Select Enterprises, Incorporated.

The meeting was described to you by the witnesses and you will have an opportunity to read the minutes of those meetings.

It is plain that the entire purpose of the discussions was to agree upon a value which would then appear in the balance sheet which Mr. Barnett was working on.

At about that same point in time, Mr. Segal got a call from Mr. Boyd saying "We are about to achieve the certified balance sheet; would you go back into the marketplace if we do", and Segal said, "Send it to me and we will see."

There are sets of telephone bills in the evidence which match up with, as I mentioned, from the mail counts, letters going back and forth with the telephone calls and also established by the telephone records.

Friday, March 27, 1970. Mr. Ford's office. Mr. Barnett receives $500 from Joe Boyd for his services

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in preparing the certified balance sheet. He also receives on that day, but fails to confirm the authenticity by a phone call which would have disclosed the forgery, the Richard Cobb appraisals, if they can be called that -- you will have to see for yourself the letter, not on a letterhead, a single sentence on the ranch land and Patio Building properties.

Of course, Mr. Barnett also receives a telegram purportedly sent by Marquardt without any cost to Select Enterprises, Incorporated.

You may find that whoever was at the other end of that telephone was not an appraiser in the ordinary and usual sense that one might expect; that is, a person trying to make a living by making fees for their appraisals. Rather, the person who sent that telegram agreed to and did render that opinion free, without having apparently any need to spend any time or expend any funds on informing himself of the $260 valuation placed on the California properties.

The following Sunday, March 29, 1970, in Dallas, Mr. Barnett admits he signed the balance sheet on that occasion and delivered it. There is a conflict in the testimony in respect of whether or not there was a discussion about anything that needed to be done before

delivery. You may ask yourselves why wasn't it delivered on Friday the 27th, at the time of the payment of the moneys, if something yet remained to be undone. You may ask yourselves if the telegram was all that was necessary prior to delivery, why wasn't the balance sheet delivered on that occasion.

You may find from the evidence that Mr. Barnett wanted further assurances in respect of the California property, oral assurances, which he received on that occasion, assurances which no auditor should have accepted orally on their face. The title insurance policy or a lawyer's opinion letter, even a lawyer's opinion letter such as the ones you have read, was a bare minimum for certifying to some such $25 million asset.

Even the tax bill showing somebody paying tax, not Uncle Sam, might have helped in determining whether that Brinlee-Vinson deed was worth anything more than the paper it was written on.

Let's pause for a moment to consider the financial report in other regards.

We have already mentioned that the mica property was subject to a mortgage which does not appear on the liability side and, of course, the Ford opinion letter doesn't explcitly address itself to mortgages and you may

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find that an auditor ought to go one step further if some opinion letter is silent in that regard and say, "Hey, did you check out the mortgages and get some sort of assurances that there were no mortgages on the property", but there was none reported here.

You should take into the room in your deliberations the pro forma balance sheet which Mr. Barnett prepared earlier and compare it, in terms of the fairness to the reader, with the certified balance sheet which he prepared at the end of March and the differences are extraordinary. Instead of saying, as he did in the pro forma balance sheet, that the figures for the mineral properties, the mica mine and the oil and gas leases, did not necessarily represent fair market value, that came out and, instead, mineral discovery values were confirmed by evaluations of geologists.

In the earlier letter, the geologists were said to have made statements. Now they are confirming values.

Joe Brown is said to be an independent oil and gas consultant, yet even in what Mr. Ford wrote, Mr. Barnett was told that he wasn't independent. He owned the property or at least owned the overriding royalty interest and the reader is entitled, in a financial statement, a document of this importance, to something being

carefully written, to careful language, careful draftsmanship. The reader is entitled to know what kind of independence Joe Brown had. He owned the property, he owned an overriding royalty interest. Wouldn't it have been fair to tell you that that $5 million figure is what the fellow who sold it to us thought it was worth and not some independent appraiser hired to render an opinion for a fee?

There is also a difference between the earlier letter and this which is of some significance. There Mr. Barnett explicitly said to the reader in substance, "Do not rely on this for extending credit or securities transactions." That phrase disappears; it disappears in the certified balance sheet. Now he told you from the witness stand that he was doing it for management purposes but you may also find from the contemporaneous evidence of what he wrote that the limitation on the uses to be put to it dropped away and, of course, that is what certification really means. Certification means to a banker that some independent auditor has attested to the value of the assets and the amount of the liabilities and that is what the purpose of the certified balance sheet is, to be relied upon by bankers and businessmen and investors and people in the community.

If a warning was appropriate in February that it ought not to be relied upon, pause to consider how much more evidence he had obtained between the time he originally put that warning and the time he certified to a $25 million California piece of land. The California piece of land that had no recorded deed, and there is no notation in his work papers that he tried to determine a book or a page number where the deed was recorded; the California piece of land without a title policy, without a tax bill, withut anything, save Brinlee and Vinson's signatures on a deed form and a telegram signed by Marvin Marquardt, and nothing more.

Monday, March 30, Dallas, Texas, Mr. Chapel sits down at the typewriter. Boyd and Joiner are looking over his shoulder and he looks out at the prospectus and you remember it is bound up in a pretty little volume with leathette covers and they show up in Kansas and in New York and in dozens of locations. Boyd is right there with him and, of course, they say we have producing mica mines in New Mexico, producing oil and gas properties in Comanche County, agricultural property in the famous Imperial Valley in California. This is March 28, 24 days after Diamond Bros. are bankrupt, and they are claiming manufacturing interests are still part of the Select family

and they repeat the mica mines in New Mexico are now actually producing substantial commercial quantities of this mineral. A big event is the securing of approximately 93,000 acres located in the well known Imperial Valley of California. The Imperial Valley has been considered among the richest and most productive land anywhere in the world.

There was no basis in fact for Mr. Knisely to sign this; no basis in any board of directors meeting minutes because, when you read those, you see that whoever drafted them said there was a discussion about the land being subject to irrigation. That is an interesting expression. Land in California subject to irrigation. Even if the reader had been told that here he might have figured out it was desert land, but there was no such disclosure here.

The distribution begins of the balance sheet and the prospectus. Mr. Ford sends one -- rather somebody using Mr. Ford's stationery and signing his name and using his secretary's initials, sends one to Mr. Grube. Mr. Grube's deed is not recorded, either. The letter says it should be recorded immediately to meet the SEC regulations.

April 2. Apparently there the seller, Mr.

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Grube, still has his deed. He didn't even turn it over, like Maxson had. Select didn't even have possession of the deed there because Mr. Grube is told that the warranty deed should be recorded immediately to meet the SEC regulations.

April 20. A 10-day suspension, the maximum the law permits, on trading in Select stock.

At about that same time, two offices, new offices are opened in Dallas, Texas. There are two desks in two little rooms. Joiner has one and Boyd the other and that's the way it is, except when other people are around and then it is catch as catch can. They are now seeking market makers.

Mr. Barker wanders in. Talks to Joiner about making a market up in Denver, where he is from. At about that time, Joiner is sent on an errand by Mr. Boyd to deliver checks to Mr. Bissett and to also pick up the Barker shares so Barker could try and make a market and he also, while he is there in Reno, picked up the California shares, the 750,000 shares given for the California land, certified to as a piece of property into Select, but the shares not yet issued.

You can see from the transfer sheets that they are issued on April 13, 15 days after the certification

date.

There are checks. Mr. Boyd to Roger Bisset, $906. You also remember Mr. Joiner's testimony that coming back from Reno on this trip he went to Texas and then up to Denver, where he spent two days unsuccessfully trying to make a loan with Mr. Barker and another fellow in a bank and they came out empty-handed.

April 13, 1970. This is a Monday. The deeds are finally recorded at the Riverside County Court House and the Imperial County Court House in California. During Mr. Ford's trip there, he looked at no records, found out nothing about the title in any legal fashion except to ask some persons with a vague connection to the property what they thought of it. He was told something about an 1840 Spanish land grant and he promptly repeated that to the SEC.

He admitted to you backdating the notarial assignment that he took out there to California to have Mr. Williams at the airport reacknowledge in which he said that he, Mr. Williams, gave under my hand and seal of office this 21st day of February, 1970.

He also recorded his own deed.

Do you recall that Goodloe and he got 11 sections of land for themselves? His was called a legal fee. He

got two of the 11 sections. Goodloe took nine. That is, if you subtract the land that Ace Associates promised to give to Select in its contract from what they actually gave, there was 11 sections left over and those were deeded into and Mr. Ford was careful to record his own deeds into himself for the property.

April 15, a Wednesday, through the 17th, Friday, at the Fort Worth regional office of the SEC. Brookshire testified on Wednesday -- the Atoka Bank; Knisely on Thursday and Boyd on Friday, and you recall at 2.20 in the afternoon Ford joined Boyd on that occasion.

Brookshire, who had just gotten Chapel's note two weeks earlier for the $28,000 loan, falsely described his knowledge of Chapel's not having an account, loan, deposit or otherwise, at the Atoka Bank.

Wednesday, Thursday, Knisely. He admits that the signatures which appear on many of the documents that were shown him were his; he admits to owning 100,000 shares of Select Enterprises, which he has at his home or his bank. Then he falsely identifies Parker Goodloe's signature on the board of directors meeting minutes, the signature which Mr. Parker Goodloe told you was not his, told you differently than he told the grand jury, that he had authorized Boyd either to directly or indirectly

have someone else sign his name.

Mr. Knisely testified that that was Parker Goodloe's signature.

Also, he reaffirmed Select's receipt of orders for mica and he also, when squarely asked about knowing Alan segal, denied that as well.

In New York on the 17th, the sun rises here a little earlier, Mr. Schleger had his deposition taken at the SEC. He carried out his part of the agreement struck earlier with Anfang and he falsely testified that he had provided the Diamond Bros. S-1 to Anfang in a chance meeting in a bar near the railroad station on his way to the Long Island Railroad.

He was later directly asked about Boyd and Segal and he admitted having met both of them. After all, Segal was his client. He was an accountant. Nevertheless, he stuck to the story about not having met Anfang together with Segal, as had really occurred.

In Texas, Mr. Boyd at his second appearance, prior to Mr. Ford's arrival, still stuck to the story about 700,000 shares only having been purchased with 400,000 shares in the hands of the old shareholders.

He was able to do this because the escrow agreement which you have seen here was not produced and

the questioner wasn't able to say to him, "Well, how about this? It says you are supposed to get all of it."

He also falsely denied having met Brinlee at Ford's offices at the meeting there on March 2.

The mica mine was still actually producing to an unnamed Houston buyer, although when he was pinned down, he did not know when any moneys were received.

He denied having pledged any Select Enterprises stock anywhere and particularly, of course, including Atoka and Atoka is where you recall Mr. Baker took his loan and where Chapel's loan and where the notes indicates stock in the vault.

2.20 p.m., Mr. Ford arrives. You recall in the transcript how Mr. Hewitt said Mr. Ford brought certain records with him and we will mark them JB-20 and 21 and 22.

JB-21 is the Cobb letter. You recall how Mr. Ford denied the accuracy of that portion of the transcript.

Mr. Boyd still denied knowing Francine Zahl on that occasion, although he had been back and gone back down to the safe-deposit box and emptied it.

Now, he admitted having once been in Alan Segal's offices in New York -- now he denied having been in Alan Segal's offices in New York but he claimed to have

met him once there in a bar for a drink and met him other times in Reno and definitely no stock of Select Enterprises was questioned.

Did Segal ask you for stock of Select?

Answer: No.

Did he ask where he got some?

Answer: No.

Of course, he hadn't produced the receipt, either, which indicated that he and Zahl had put the stock into the safe-deposit box.

At that point, Mr. Ford broke in and reported on his claimed partial record search and the chain of title from the accountants down to Perez. Even though he now admitted that he had looked at no records and particularly no tax assessments, which would have shown what you know, that the United States Government owns most of the land and you don't need reverse and direct indexes to ask the tax assessor, who is paying the tax bill on this property.

April 20, 1970, and during that week Mr. Boyd and Mr. Joiner meets some new participants. Mr. Mullenax, Mr. Rouse and a man named Stevens from Miami. All three talk about loans with Select stock.

Joiner and Boyd sign powers then and they gave Mr. Maxson and Mr. Rouse 40,000 shares. 40,000 shares,

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which are worth nothing if the stock is being traded at nothing, but are worth $600,000 if the stock reopens at $15.

On Monday, April 20, 1970, Mr. Boyd and Mr. Chapel meet in Selwyn Weber's room at the Worth Hotel and, as Mr. Chapel described to you, Boyd solicited his perjury. He said, "For goodness sakes, don't tell them about the loan at the Atoka Bank that you signed on my behalf", and as Mr. Chapel reported to you, he obeyed on the following day. He went down there and perjured himself about both that loan and also the shareholders' letter which he had authored. You recall he was shown the caption of the letter and asked if he had ever seen it before and he said that he had not, no.

We come to Wednesday the 22nd. Mr. Goodloe's deposition was taken in Fort Worth. He admits, as I told you at the outset, that he had paid $10,000 for the mica claims back in 1964. He admits that he paid $40,000 for the oil and gas properties in '69 but, of course, he fails to mention that it was all borrowed money and that the Petersons were also in the note. He admits having traded 60,000 Select Enterprises shares for the California land and receiving the 11 sections, nine for himself and two for Ford.

So, on that occasion, he further states that on his inspection of the California land, to his eyes it was good looking soil. He also admits to having delivered in two different blocks 1300 Select shares to three or four other men to make bank loans.

At about this time, the Nevada National Registrar's agent is switched to Rocky Mountain in Sante Fe, New Mexico and at that point Joiner sent his friend Hale over to New Mexico to get the shares to take to Florida to try to make the bank loan there and it is also about this time that Mr. Joiner calls Mel Richards of Enterprise Securities in Las Vegas, a man whose name had been mentioned by Boyd for some weeks as going into the sheets at any time, substituting for Segal, and asks him about broker-dealers going into the sheets and why the delay and you recall that he said that Mr. Richards said, "Well, my application is in but they just won't approve it."

Then you recall the testimony that on Sunday morning, the 26th, JOhn Wells was in Las Vegas. He visited Mel Richards at Richards' offices in Enterprise Securities and Richards said to him, "How about going in the pink sheet in Select Enterprises stock? I'll protect on both sides in the 12 to 14-dollar price range. I'll send you customers and supply you stock."

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He supplied Mr. Wells with some of the documentation which you are now familiar with. Wells returned to New York, received a call on Wednesday from Virgil L. Barker, a familiar name. Mr. Barker would like to open an account. He would like to open an account. He would like to buy 500 shares of Select Enterprises stock at $12.

On Friday the 30th, I believe it is a Friday, Mr. Barnett testified at the Fort Worth regional office at the SEC. On that occasion he admitted in the transcript that he had certified the balance sheet in the face of Mr. Ford's having said that he, Ford, thought that Mr. Brinlee and Vinson were crazy to sign warranty deeds under the circumstances as he then knew them.

May 1, 1970, New York. Mr. Titlow has his deposition taken. He admits to having sold the shell for $40,000 but he denies the very existence of the formal contract in which he and Boyd signed on January 13 and signed again on the receipts January 21.

So long as that contract was kept hidden, the details of the relationship were able to remain obscure.

On that Sunday, May 13, Mr. Wells sent a telegram to Alabama at Mr. Boyd's request. Boyd had called him at home and he had wandered around to find an open Western Union office and sent the telegram to

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Continental General Insurance, advising Rouse at that end that he would be going into the pink sheets that week and on Tuesday the 5th at his brokerage house by 11 a.m., he dropped a card into the box where the National Quotation Bureau messenger comes along and picks up the application forms and they go to the printer and come out that night and the following day, the 6th, he put a new card in for the next day and, on that morning, the pink sheet dated the 6th appeared, carrying his quote.

The SEC called him in by mid-afternoon. But, before going, he made a few phone calls. He called Boyd and couldn't get through. He called Barker and Barker said that there is nothing wrong. He then called Richards, Mel Richards, at Enterprise Securities and said, "What does the SEC want with me?"

Richards said, "There is nothing wrong but, for goodness sakes, leave my name out of it", and he did.

Wells went to the SEC and made up a story about having met a Mr. Thompson in a hotel room and Mel Richards had not solicited his entry into the stock. He later was able to raise Boyd and he told Boyd what he had done and Boyd didn't say very much.

On the 7th, the following day, an order comes in to Wells on the telephone. It gets stamped in. It

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was to sell 200 shares of Select Enterprises stock at a price of 11. You heard from Mr. Murfield and Mr. Morley that the shares that they were trying to sell also bore the name Virgil L. Barker. You may find there is a certain identical parallel between the transaction then underway and those that Alan Segal had conducted.

You may recall the use of different accounts with different names and yet, Alan Segal was in control of the price apparently to the market that was being employed in trading Select stock.

On May 8, Decatur, Alabama, Mullenax delivers the Select Enterprises balance sheet to Mr. Collins of the State National Bank. He delivered his own balance sheet on that occasion, which did not list that as of April 30 he owned any stock, even though he got 40,000 shares, together with Rouse a couple of weeks earlier. He did list the airplane, which will come in handy in the events of the following day. He also delivered up a list of brokers that included Crown Securities, John Wells and phone numbers and you recall the testimony of Mr. Collins that on the strength of that phone call to Wells, who falsely reported some trading in the stock in the $12 price range, and that even if a big part, like 20,000 shares were brought in, it would depress the stock market; that

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unless it was sold out in small lots, on the strength of that call Mr. Collins lent $60,000.

Of course, Mr. Mullenax does not share with Mr. Collins the circumstances under which he acquired the shares. He does not share the fact that they were acquired at substantially less than the $480,000 face value, if you took the $12 price as being a real one. He does not reveal any arrangement to share the loan proceeds.

The next day he appears in Wichita, Kansas, flies in, pays the banker there that he owed money, $1000, to show an ability to continue paying and also delivers another block of stock to Mr. Nichols.

It takes a few days. Of that $60,000 proceeds, do you remember the twenty thousand and some hundred dollars went to Don Rouse who then endorsed the check over to pay off a guy named Lewis' debt to the bank. He only walked away, $60,000 less that amount less the prepaid interest, Mr. Mullenax. He used a few thousand. When it was wilted down he ended up with $25,000 which he took to his bank in Kansas and after some back and forth it finally got deposited on May 18, 1970 into his and his wife's account.

On the occasion, by the way, of his delivery to Nichols, the stock certificates and the $1000 check, Select stock, he didn't disclose any facts and circumstances to be material to Mr. Nichols making the loan or extending any further credit forebearing to enforce his debt.

On the 18th it was a busy day. In Alabama Mr. Mullenax gets an additional $5000. Later, in Dallas, Mr. Boyd and Mr. Mullenax are in the same room with Mr. Chapel and on that occasion Mr. Chapel expressed his hard pressed need for cash. Boyd turns to Mullenax and says, "Do me a favor and give him $3000."

You will recall Mr. Chapel's testimony how he then flew with Mr. Mullenax to Mr. Mullenax's bank in

Kansas and where that $25,000 was that day credited, and out of the $25,000, $4,000 was immediately debited out, $3,000 of which was a bank-to-bank telegram transfer, and there was a deposit slip that Mr. Chapel found showing the $3,000, and $1,000 was taken away by cash, and Chapel returned and gave it to Boyd in Texas.

On July 1, 1970, Mullenax and Rouse, again in the Dallas offices, this time Hale and Joiner are there. Once again the subject of needing money is raised, and once again Mullenax volunteers to be able to make a loan and this time 50 percent of the proceeds of that loan would be shared with Joiner.

Two trips were necessary, and the first trip Hale went up and came back empty-handed. But on the second trip Mr. Chapel went along and there received a $9,000 check signed by Mr. Mullenax and made payable to Mr. Joiner, the $9,000 being approximately half of the $18,000, and a little more that he netted on the proceeds of that loan. That loan was collateralized mainly by Pig 'n Whistle stock. Joiner told you he had had to pay some of the $9,000 to the guys that gave him Pig 'n Whistle stock. It was collateralized by Select Enterprises initially at $2,000 and then later raised to 10,000 shares.

In the order of things, the defendants' attorneys will address you and we will be permitted an opportunity to briefly meet some of those arguments. At this stage, suffice it to say that the facts which I have outlined are, in the government's view, the record historical facts which are now in evidence before you, and from which the government submits you may find that the guilt of each of these defendants is established as charged in this indictment beyond a reasonable doubt.

Thank you.

THE COURT: Ladies and gentlemen, we will take a ten-minute recess.

(Jury out of box)

MR. BRODERICK: Your Honor, I would like to take exception to the summation. There were two or three points on the summation that I would like to take exception to.

THE COURT: The time to take exception was during the summation.

MR. BRODERICK: I have the impression, your Honor --

THE COURT: You have no impression from me. I did not tell you anything about that other than to say that if anything occurs on the summation that you want to

beyond a reasonable doubt. I made you promise me on September 9 that before you convicted my client you must be satisfied beyond a reasonable doubt that he was a part of this conspiracy. If you do justice to my client, I know you can live with your conscience.

I want to thank you for your attention. I appreciate it deeply from the bottom of my heart.

MR. EHRLICH: May it please the Court, members of the prosecution staff, defense counsel, and ladies and gentlemen of the jury:

In my opening remarks to you I warned you of the mass documentation. I characterized it as "tons of documents in this case." I told you that you would have to consider the evidence with regard to each defendant separately. I remind you of this again. Each defendant is entitled to your separate consideration in respect to the acts, the intentions, and the knowledge of each.

I also made it a point in my opening remarks to inform you that the evidence in this case comes from the testimony on the witness stand and the exhibits received by the Court in evidence.

You, as the judges of the facts, determine which evidence you will give credit to. It is your recollection which controls, and you decide which evidence

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to accept or to reject.

Nothing that Mr. MacDonald or that I tell you in the course of our summations is evidence. I emphasize this to you because if you will recall Mr. MacDonald's summation yesterday you will recall that he testified that on April 20, 1970 Rouse and Mullenax received 40,000 shares of Select Enterprises stock from Boyd and Joiner. This is not what the record reflects.

I ask you to recall my cross-examination of the witness Joiner. I asked him the following:

"Q Was it right after you had the meeting with Rouse and Mullenax that you went to the bank and executed assignments of Select stock?

"A They were there a day or two before."

I then showed Mr. Joiner the assignment. I pointed out to him that it was dated May 7, 1970, and therefore he had to acknowledge that the meeting was within a week's latitude at the greatest, but he said "a day or two before May 7."

So April 20, 1970, contrary to what Mr. MacDonald said, Rouse and Mullenax did not receive any stock and that's why I tell you what we say in summation is not evidence. It is what you heard and what you consider to be true.

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Why is this important? Because Mr. MacDonald then pulled out a financial statement of Dr. Mullenax dated April 30, 1970 and he said, "There is no Select stock here."

There were certain other items not reported on that. The Select stock was worth $480,000. It was not there. Do you know why it was not there? This financial statement is dated April 30, 1970 and on April 30, 1970 Mr. Rouse and Mr. Mullenax did not have one share of Select Enterprises stock.

Secondly, the argument with respect to this financial statement did not have any Select stock clearly shows the desperation of the prosecution's case against Dr. Mullenax. Dr. Mullenax happens to produce this very statement to the State National Bank at Decatur. That's where he put up 20,000 shares of Select stock, so to give any kind of argument or inference that even the bank -- he had Select Enterprises stock -- that's ludicrous. That is why it is important for you to remember that it is your recollecti that recalls. The evidence is from that witness stand and the exhibits alone.

There are two financial statements of Dr. Mullenax in evidence, one dated April 30, 1970 that he

gave to the State National Bank, and one which has a date on it of May 1, 1970, which he gave to Mr. Mann at the Town and Country Trust in July, three months later.

On one statement he reports a net worth of half a million dollars, and on the other a million dollars.

I want to point out to you that the second statement contains the Select Enterprises stock plus stock of Continental General Corporation, which was not in the April 30, 1970 statement.

With respect to the reporting of Select Enterprises at $480,000, I want to point out the following: I asked Mr. Nichols, the president of the Home State Bank, the following question:

"Q Are the pink sheets an acceptable device to ascertain the market value of the security listed in it?

"A Normally for that type of security.

"Q If a person went to the pink sheets and he saw a price of 12 for Select Industries and then came to the bank and gave them 10,000 shares of Select Industries, he could represent that the value of those 10,000 shares are $12 per share; is that not so?

"A Yes."

So now Mr. Mullenax, having 40,000 shares at

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$12, there is no other way to report it. You can't say $12. If I tried to sell all the stock I would not get that much money. If it is reported at $12, as Mr. Nichols indicated, it is the proper way to record it.

I should point out that that does not mean that any banker worth his salt would think that 40,000 shares of Select was worth $480,000. You submit it. That is the way it is reflected on the pink sheets. You give it to the banker and he makes his own investigation of the company.

I also point out that a personal financial statement, one that any one of us might have to submit to a bank, is a statement that is unaudited, uncertified, and it is really nothing more than a biased opinion of the person preparing the statement for himself about what he is worth and what his assets are worth. In consideration of what the government has emphasized as being a certified financial statement and the like, I would ask you to take this into serious consideration.

Again, reminding you with respect to Mr. Joiner's testimony, and even Dr. Chapel's testimony, May 18, there is no mention of Dr. Mullenax until the earliest, May 1, 1970. I point out to you that he has no connection with the following factual allegations:

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One. The revival of Goldfield Candelaria.

Two. Its change of name to Select.

Three. The creation of a market in the stock.

Four. The acquisition of any companies.

Five. The preparation of any financial statements, news releases, brochures, or any other documentation prepared for distribution; and

Six. Any statements, testimony, or documents prepared or given to the Securities and Exchange Commission.

You, ladies and gentlemen, are part of a great system. All men and women stand equal before the eyes of the law. It is your duty to render a fair and impartial verdict. In doing so you must give full credence to two fundamental concepts of our republic, the burden of proof required on the part of the prosecution and the presumption of innocence shielding every defendant.

It is a terrible thing to be hauled into court. Dr. Mullenax, as he sat here, faced people on the witness stand who manifestly had a very high regard for his abilities and as a person. Now there are possibly whispers and fingers pointed, and in our law we don't believe in branding a man a criminal unless he is proven guilty beyond a reasonable doubt. We presume a man

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innocent until the prosecution proves each and every element of every offense beyond a reasonable doubt.

In my opening remarks to you I promised to give you reasons for doubt and I will give you several serious reasons for doubt.

I point out, again, that Dr. Mullenax is on the periphery of the vast allegations contained in this indictment and the prosecution alludes to his involvement in the conspiracy because it is said he shared proceeds of the loans obtained from banks where Select stock was pledged. This is a scandalous and ridiculous accusation.

Let's look at the checks the prosecution maintains were paybacks for loans.

First, the check in the amount of $4,000. Chapel testified that he was sitting with Mr. Boyd and Mr. Mullenax and that Mr. Boyd told his friend for seventeen or eighteen years, "Give Dr. Chapel $4,000. He is in terrible financial condition."

They made a point that Chapel went back and he gave Mr. Joiner $1,000. But here is the critical thing. On cross-examination I asked Mr. Chapel and he testified that he did not tell Dr. Mullenax the use he was going to make of the funds, the $4,000, other than to take care of obvious financial problems. So Dr. Mullenax had

absolutely no knowledge of any payment to Joiner of $1,000 by Chapel.

Next, and, again, it is only an allegation, there is a check in July of 1970 to Joiner in the amount of $9,000. First I point out that this check is written three months after Dr. Mullenax obtained a loan from the State National Bank and put up the $25,000 in his account in the East Side National Bank. I pointed out to you if you will remember during the course of the trial that at the time he made this transfer his balance in the account at the East Side National Bank was $4.79.

In July of 1970 funding for the insurance company was not coming through and Dr. Mullenax again was facing serious financial conditions himself. The evidence clearly shows that Joiner obtained 40,000 shares of Pig 'n Whistle stock from Dr. Mullenax. Mr. Mann, the trustee for the Town and Country Trust, who accepted the Pig 'n Whistle stock as collateral at the bank, testified that his stock was worth $1.50 to $2.00 per share, meaning $60,000 to $80,000. Again, no banker worth his salt would believe that if you tried to sell 40,000 shares of Pig 'n Whistle stock he could obtain, in fact, $60,000 to $80,000. But that's what the person granting Dr. Mullenax a loan would probably say it was worth,

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and, at any rate, Mr. Mann said the stock fully covered the $20,000 loan.

For this, Dr. Mullenax had to pay $9,000 for the $60,000 to $80,000 worth of stock.

In any event, there is absolutely no meaningful or relative connection between the $9,000 and Select. Select stock was also pledged for the loan, but the record is clear that the $9,000 was for the 40,000 shares of Pig 'n Whistle.

Lastly, in this regard, Mr. MacDonald alluded to the fact that Dr. Mullenax, in effect, received $25,000 to $30,000 from the State National Bank loan. The evidence shows that $25,480 was used to pay off a note of Ray Lewis, who was the predecessor president of Continental General Life Insurance. The note was $20,000. Mr. Collins said the $25,480 reflected the principal plus interest on the loan that was due.

If any contention exists on the part of the prosecution that this was a payback, it is absolutely ludicrous, again, because it was for the benefit of the bank who is not involved in this indictment, and Rouse has not been shown in any way to be in any inner sanctum of any conspiracy to receive the benefit of the $25,000 payback.

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What the record shows is that State National Bank required the payment of the note as part of the granting of Dr. Mullenax' loan. Mr. Collins was very smart, and I will tell you why:

First, I established he granted the loan in one day. He was very anxious to grant this loan because Mr. Collins had hopes of being a banker for a very large insurance company as far as Decatur goes.

Secondly, if you deduct this $25,480 that was to the direct benefit of the bank -- Mr. MacDonald said it left something like $35,000 to Dr. Mullenax -- Dr. Mullenax was paying 8 percent on a 60,000 note and only receiving $30,000. This bank was taking 16 percent interest. Mr. Collins looked very good. Ed Lewis' note, which was in default, was paid off and he was gaining a 16 percent effective interest rate because Dr. Mullenax was only, in effect, getting $30,000.

The prosecution tries to distort that this loan was granted because of his call to Crown Securities. If you look at the pink sheets, H and I, under Select where the quote is 12 to 15, Crown Securities are listed as the only dealer in the stock.

Mr. Lewis' note was in default and the bank got paid off. It received, in effect, 15 percent

interest rate, and the kicker to the whole thing, he called up the Union National Bank where Dr. Mullenax had outstanding loans, and they gave him the highest credit rating. The bank did well on this particular loan.

The important thing for you to remember: Did Dr. Mullenax have an intent to defraud? Was he knowingly a member of any vast conspiracy? Was he aware of the alleged fraudulent nature of his loan transactions? Can you brand this man a criminal? Can you say that the prosecution has proven his guilt beyond a reasonable doubt.

I now give you the first reason for doubt: The scandalous proposition that the $4,000, the $9,000, and possibly the $25,000 were paybacks for the illegal use by Dr. Mullenax of Select stock to obtain loans.

If you look at the evidence you will have serious reason for doubt that the checks were written wilfully and knowingly pursuant to any alleged scheme to defraud and with any specific intent to defraud on the part of Dr. Mullenax.

Let me go directly to the second serious reason for doubt. I asked Mr. Nichols as follows:

"Q If a person puts up collateral for a note and that collateral should fail, is not the person

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individually liable for the note?

"A Yes.

"Q Meaning that Dr. Mullenax still owes the bank money?

"A Yes.

"Q He is legally liable for the balance of that loan?

"A Yes."

Dr. Mullenax owes every penny of every single loan with interest to this day. He was and he is independently responsible for the notes, independent of collateral for the 1968 loan at the Home State Bank and for the 1970 loans. This is a very serious reason for doubt that his use of Select stock was with any intent to defraud.

In connection with this serious reason for doubt, please recall that when Dr. Mullenax spoke with Mr. Nichols, the president of the Home State Bank, prior to May 8, 1970, he had high hopes of paying off the entire loan. Nichols testified that he had a basis for understanding what Dr. Mullenax meant. He expected, and Dr. Mullenax was representing that he was expecting, funding from an insurance company -- that is defendant Mullenax's Exhibit G, a telegram to Dr. Ernest Mullenax

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stating, "I believe we can fund.Continental General commitment in about a week and a half."

That was why Nichols testified that he had a basis for understanding what Dr. Mullenax meant.

Now Mr. Nichols knew the realities of life. He knew that people sometimes cannot pay on time. He knew people faced hardships, and he says it was not irregular for the banks to give continual extensions, and so forth. People in business borrow money from banks, and when something unexpected occurs, like not getting the funding you expected from an insurance company -- they may have difficulty obtaining money; they may attempt to raise money -- at any rate, if it doesn't get its charter the company fails and the people behind it fail.

Again, the second reason for doubt. Dr. Mullenax owes every penny due on every note with interest to this day. You heard the witnesses and what they knew and heard about Dr. Mullenax. Unfortunate things do happen and business hopes and aspirations collapse every day, but the most unfortunate has been this unwarranted accusation.

Now for the last reason for doubt: When Dr. Mullenax went to the State National Bank, the Home State Bank, he had with him information on Select, names,

brokers, dealers, news releases, brochures, financial statements. If you look at his financial statement, the last one says he has $232,000 of notes secured by stocks. This is a person who well knows what a bank requires and likes to have, and the bank likes to publicly disclose the released documents on the company. It is not like there were two sets of publicly disclosed documents. There was one set of documents that the corporation kept and one that was made available to the public. These were the materials prepared for public distribution well prior to May 1970.

Dr. Mullenax had no part in their preparation and so I give you the third reason for that doubt. The record shows that Dr. Mullenax was never present at any meeting among any alleged conspirators at which details of any alleged fraudulent scheme with regard to Select was planned, approved, or carried out. There is absolutely no testimony or other evidence that Dr. Mullenax knew anything about the company, Select, or that its stock was purportedly fraudulent. There was not one shred or scintilla of meaningful evidence as to the latter.

I think you will find, ladies and gentlemen, that the proof is barren. Regardless of what may be the

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contentions of the government, there is no proof even from the circumstances from which you are called upon to infer that maybe there was some proof, that maybe Dr. Mullenax did have knowledge, that maybe he did have an intent.

It is just as acceptable that his conduct was innocent throughout and would require, in the interest of justice, simple fairness, as each one of us would want to be dealt, and by your clear and certain verdict proclaim as loudly as you can that Dr. Ernest R. Mullenax is not guilty.

Thank you very much.

THE COURT: Mr. Lesser, you may proceed.

MR. LESSER: Judge Pollack, gentlemen, Mr. Foreman, and ladies and gentlemen of the jury:

I represent Dr. Knisely, one of the defendants in this case who I introduced to you as a 78-year-old chiropractor from Midland, Texas.

Dr. Knisely was the temporary president of Select, a president without authority, without participation, who had absolutely no voice in the affairs of the company.

I am not going to go into the questions raised by my colleagues. I am not going to talk about presumption

THE COURT: Mr. MacDonald, you may address the jury.

MR. MacDONALD: Judge Pollack, fellow counsel, Mr. Foreman, ladies and gentlemen of the jury.

Yesterday Mr. Segal dramatized the argument that you should reject out of hand those of the Government witnesses who have previously been convicted of crimes, by miming the tin soldier dancing to a predetermined tune in a predetermined manner. If you think for one instance that those men were drilled to give ou a predetermined tune, to make a case where historical fact doesn't permit, then don't bother leaving the jury box; turn to your partner next to you, nod your heads in agreement, and hand up a judgment of acquittal.

If you think for one instance that the evidence you have heard was fabricated, preconceived, placed into a mold for the purpose of making a case against Joe Boyd or Marvin Rappaport or any other individual seated here at these tables with the connivance between the witnesses and with the active aid and abetment from the Government, don't bother leaving your chairs.

If you think that men who take that witness stand in this Federal Court House are tin soldiers wound up to play a tune, at odds with history and the fact, then

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don't leave the room. If, on the other hand, you are prepared to approach each witness individually, examine him, examine his motives to fabricate, to tell the truth, examine those motives against the documents that show what he did and what he didn't do, and those about whom he testified and what they did and did not do, and then to place appropriate weight and stress on that witness' testimony, you may decide, having done that, to reject out of hand the testimony of any witness.

You may decide to accept some portions or all the testimony of others, but to make a blanket decision to reject the testimony out of hand of the Government witnesses, the Government submits would be disloyal to your oaths, disloyal to the trial and the evidence which you have heard over these three weeks.

Let's examine for a moment the testimony of Alan Segal, Jim Joiner and John Wells, three men who have pled guilty to one or more counts of this indictment. All three pled to the conspiracy count. They face a maximum of five years on that count.

Segal, in addition, pled to four other counts and the total maximum sentence he could receive is 25 years.

Others, and I mention Shwidock only because of

the judge who is sentencing him is also Judge Pollack, have pled guilty in other cases and face maximum prison terms in accordance with their pleas. Shwidock also a maximum of five years from Judge Pollack.

On February 11, this year, downstairs in a courtroom like this, much like your jury wheel was spun in the beginning of this case a wheel was spun and Judge Pollack's name was removed from the bin and all the defendants in this case had their cases assigned to Judge Pollack. As of that time, February, only Alan Segal had agreed to testify for the Government and talk about what the implications of that agreement are. John Wells had not, Jim Joiner had not. They pled guilty within the last six weeks, after Judge Pollack had drawn their case.

All three men sat four feet away from him and gave testimony, and Shwidock is the fourth, to use in respect of their, as they swore, best recollections of the facts as they occurred, as they participated in them as they saw them in 1970.

Now, consider for a moment that if Stuart Schiffman and Alan Segal decided to cook up a scheme -- think about that scheme; think about two men sitting over a drink deciding that we are going to pick, at random; someone who socially has annoyed us, or in a business

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fashion has annoyed us, and fabricate a story of his criminality with us and we are going to deliver that up to the Government and maybe deliver it up to a grand jury and later a trial jury and we think we can get away with it because we have seen one or two documents with his signature on it and we will try and weave our story around those documents. That is what the suggestion was in respect of some one or more of the defendants and their motivations to tell a falsehood to you.

Also, you have to appreciate that John Wells and Jim Joiner, three weeks before this trial, decided to jump on board and to support the pre-planned script by also conforming their testimony to the false version designed to get Mr. Boyd, get Mr. Gardner or one or another of the other defendants.

If you believe that, if you really believe that that happened, don't bother leaving the chair. Or, if you think that maybe being seated in that chair, under the circumstances of having a long maximum prison sentence hanging over your head maybe the single most efficient, effective and direct encouragement to tell the truth and to tell it straight and to give your best genuine recollection, even when it conflicts with Segal and Schiffman, conflicting with one another, and I suppose the answer is

they are supposed to have pre-planned their conflict as well, and to tell the story exactly as you remember it and let the chips fall where they may, to tell you that they recall for example that my chauffeur, Torres, delivered the contract to Karen & Company and, in Schiffman's case, I thought Rappaport delivered it; in the grand jury I said Torres but now I think Rappaport, and I am telling you on oath before Judge Pollack that I think it is Rappaport -- now, think for a moment.

In Schiffman's case, he has a different judge. It is not Judge Pollack who is going to impose sentence on Schiffman.

But, you have heard the witnesses testify that the sentencing judges in this case will receive a report in respect of the testimony both before the grand juries and the trial juries -- not in front of the judge; he doesn't need one for Joiner, Wells and Segal -- as to whether or not their testimony has been candid and forthright, whether they have lived up to their commitment to tell the truth, stop perjury and to tell trial juries and grand juries what occurred as a matter of historical fact.

I haven't looked at any notes and I am not sure --

Now, that doesn't mean, and I said in my opening

that the Government makes no blanket endorsements nor blanket disavowels or apologies for any of its witnesses. That doesn't mean that you should accept, without care and caution, the testimony of the witnesses you heard. You should employ care and caution. And, listening to Alan Segal, he deserves an extra measure of care. He has a history of several convictions and the history, as you heard it, of having once before testified for the Government and when he was being sentenced by the judge being right in the middle of the Select Enterprises swindle. He had just finished Pioneer and was about ready to start Select. Maybe that was sufficient. So, if you didn't have any writings with Boyd's name on it, associated with Mr. Segal, to reject Segal out of hand.

Joiner, on the other hand, has only one other conviction. He went to trial on that case, as he told you, and he is a little bit different.

Wells had none before.

Maybe you should just appraise their testimony in respect of their backgrounds and their history. And. in the final analysis, the file drawers on that table, in the main, form the backbone and the framework and structure of the Government's case. After all, Alan Segal didn't forge Joe Boyd's name to the deposit receipt

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for placing 900,000-plus shares of Select stock into the Chemical Bank vault. Francine Zahl wrote that receipt out, not Alan Segal. Francine Zahl put the numbers in and Joe Boyd signed underneath it and when Joe Boyd testified at the SEC, and that transcript is there and the court reporter has no motive to fabricate one way or the other -- he may make a mistake or two, but when he took down Joe Boyd's words in April of 1970, when Boyd was asked, "Did you ever give stock to Alan Segal", he said, "No, sir."

You can pause to reflect on the further suggestion made on Mr. Boyd's behalf that he was a genuine businessman, genuinely engaged and hopeful in a striving or at least an embryonic mica, oil and gas and land business.

Ask yourselves why was it necessary, if he had a genuine, bona fide, good faith business intention, to keep from the SEC in Texas his having delivered 900,000-plus shares of stock, over a million shares, when you count Segal's in, and why he didn't deliver up that receipt signed by his name, Joe Boyd. Why did he keep that act from the SEC?

I overlooked a point. It would be nice and convenient and would make it easier for trial juries and grand juries alike if the Government would produce only rabbis and priests who observed the events, who have no

stake in the outcome, who have no interest whatsoever in telling the story not like it is but, as you have come to appreciate the only persons permitted to view the history in any fashion that would be helpful to you are those who are permitted in the inner councils and in the law offices or the accounting offices or Segal's office in the course of the Select Enterprise scheme to defraud.

The Government has a burden of proving beyond a reasonable doubt, as you have heard, and can you imagine what the arguments would have been if the Government had not called those eyewitnesses to the events? Can you imagine the "Where is Allen Segal, where is Jim Joiner" refrain that you would have heard if those men hadn't come here and taken an oath before the judge that is going to sentence them to tell you what they recall and what they remember.

In the order of things, this rebuttal is limited in time and in the subjects that can be covered. It is necessarily brief, addressed to only the new matters that were raised.

I note in passing that Mr. Marvin Segal, on behalf of Mr. Boyd, did not call to your attention beyond the testimony in the SEC that I have referred to in which Mr. Boyd didn't reveal the receipt and delivery to Alan

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Segal of the stock the further question that I did refer to that he had been asked about making the market in Select stock and what he knew about that. Boyd's answer was, then, and it is recorded, "Gee, I only called up two brokers in Odessa and Lubbock", and he did not reveal at that time, as recorded by the reporter, his having purchased 50 shares or Maxson's purchase of 10 shares. Pause to reflect that if Mr. Boyd really, genuinely believed that he had a wonderful business, why did he misdescribe what he knew about the market in Select Enterprises stock.

If he really thought that Alan Segal was, I guess the suggestion was, an agent for acquisitions here in New York, why did he hide that fact? If he really thought that it was a good faith business with prospects for sales of mica, why didn't he say so -- "We have prospects for sales of Mica", instead of spelling out commercial production in tonnages and amounts that just weren't factual?

Why did he keep Segal's name out of the Diamond Bros.-Riverside contracts, the very documents which he, Boyd, produced.

If there really was a genuine business purpose, why was it that when Mr. Harrelson produced the contents of the desk as it existed in the fall of 1970 there wasn't a single scrap of correspondence or some business record

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produced which showed a genuine business, showed genuine efforts to sell the products?

Is there any evidence that Boyd was proud of his business? Is there any evidence that he openly associated his name with it in any way? He and Joiner, as you know, owned all the shares. They paid $40,000 for them. Why didn't he make himself president or Joiner make himself president or at least a member of the board? Why wasn't his name somewhere in this prospectus? Why wasn't he proud of his genuine thriving business?

The uniform answer, we submit, is that he was engaged in a scheme to defraud and he knew it and if he revealed the pegged market price as false as it could be to the SEC and his knowledge of how he obtained that pegged market price, that he would be admitting to a scheme to defraud.

If he revealed Alan Segal's connection with making that price, and there is no doubt in your mind that Segal made the trades, that Segal used the stock that Boyd brought to New York in the Glantz and Zahl's names to make these trades, used the stock to make the loans and generate the cash here in New York that he did, why didn't Boyd reveal all of that, unless he knew perfectly well that bankers and investors across this country would be relying

on a $15 to $17 price and that that price was as phony as it could be. This is not a case where a business started out and slowly the price went up in some ratio to success, to profits. It was pegged falsely, fraudulently at the outset and Boyd knew it and the reason he told the untruths which are recorded there, and they don't depend on the veracity of anybody, is because he didn't want the true intentions revealed.

Mr. Goodloe, Ed Goodloe, had a similar argument advanced on behalf of him. He was, you recall, the largest shareholder and had the biggest loss. He put in those $24 million in property initially and then later, with Brinlee, aided Brinlee in putting in the additional $25 million and, in the course of describing his role, it was emphasized that he, too, was not an officer and was not a director.

Pause to reflect that if you really are the biggest contributor of all of the assets of a genuine business, whether you might not take some interest in making sure your assets, if they are being worked when you contribute them or you hope they will become work, you might ask to be on the board, you might take a managerial role in the business. You might, at least, ask that your name be included in the prospectus somehow, as the person who

provided virtually all of the assets of this $15 million corporation.

His counsel failed and neglected to mention that his SEC testimony was recorded by the reporter that he had also given out shares of stock, some 1300, a thousand to one man and 300 to another, in Texas to obtain bank loans.

His testimony, which was also not referred to in describing this investor loss role before the SEC, did not reveal the Peterson interest and, of course, there is the Atoka note signed, Ed Goodloe, James Peterson, Donald Peterson, and did not refer to the withholding of that fact from the Securities and Exchange Commission on the record, either.

It was his 60,000 shares which served as the down payment for the California land. Pause to consider, 60,000 shares at $15 a share is worth a million bucks. Mr. Goodloe gave a million dollars for land which he, under oath, described as looking like pretty good soil. His investment had gone from the 10,000 in the mica and the 40,000 of which he didn't put up a penny, to $1 million. Do you think he genuinely believed he was giving away a million dollars worth of stock for that California land? Or did you think he was giving Brinlee what Brinlee wanted

to sign that warranty deed.

Mr. Lesser argued on behalf of Dr. Knisely that Dr. Knisely had not been shown to have met Alan Segal and, thus, when Knisely testified at the SEC that he didn't know Alan Segal, that is not false testimony. Mr. Lesser overlooked his cross-examination of Alan Segal when he asked him if he actually met Knisely and Alan Segal said yes, in a contract meeting and the contract was on the end table and I might have turned my back or gone to the men's room when it was actually signed; I can't remember. I remember him taking the pen in hand.

The signature on the contract is really identical to the dozens of samples of Mr. Knisely's signature. The most obvious one and the one that pops to mind foremost is the letter claiming on behalf of Select the matters that you have now heard are false in important respects.

Mr. Richman, on behalf of Mr. Titlow, overlooked Mr. Titlow's testimony denying the existence of that contract which Mr. Rooney had in his hand, the escrow instruction contract, the $40,000 sales contract. If Mr. Titlow had nothing to hide, was not embarrassed, was not something other than someone who found the corporation in the hills and selling it off and washing his hands of

the whole affair, why did he deny the existence of such an agreement?

Of course, he didn't make any mention of Christine Smith's having backdated the key record of the issuance of the large blocks of shares from the February, late February time until January 25. You recall the number sequence, 1801 to 1804 and you will find it on the transfer sheets.

Mr. Ehrlich really had no explanation for why James Joiner was listed on a check on the Mullenax account for $9000 in July and why Chapel went up there and cashed that check and brought the cash back. That testimony you recall by Mr. Joiner was that Mr. Mullenax agreed to make a loan and to pay him half the proceeds and he provided Pig 'n Whistle stock and he also had some Select left over from May and, even if you discount downward Joiner's testimony, because he has once been convicted as a felon and then you give whatever appropriate weight you think is fair and adequate under the circumstances to the fact that if Judge Pollack thinks he is sitting there and lying to you and lying to the Court with the five-year sentence hanging over his head, pause to consider why is Mullenax writing a $9000 check almost half, less the interest, of that loan to James Joiner in July of 1970,

unless Joiner is telling it like it is.

There is no business relationship, there is no collateral relationship that you have heard about in the evidence, the uncontradicted evidence in respect of the payment of that sum.

Four witnesses testified about Mr. Vanasco's role in Karen & Company. One of them recalled Select Enterprises, Schneiderman. He recalled it after the statute of limitations of five years on his testimony in September of '70 had run out. The question put on cross-examination was did the suggestion come from the Government. That is an interesting question. I suppose a witness, when asked did the suggestion come from the Government, might think "Did the Government ask me about a fact", and name the fact or the witness might think that the question implied something more venal.

If you ask a witness before a trial, and every lawyer in this courtroom and every lawyer in this Court House asks his witnesses before trial for their best recollections, if he recalls who he dealt with at Karen & Company, who did he get the balance sheet from and, if the witness says, after being assured that the statute of limitations has run on his previous testimony, that he got it from Azzarone, that he got it from Vanasco, you

might conclude if you might conclude if you want to that that suggestion, that seed, was planted with a view to corrupting the witness and corrupting the processes. Or, you might conclude that it was asked to see if his recollection, like everybody else who had been dealing with Karen & Company, was that Vanasco was the man he dealt with.

Shwidock, who is to be sentenced before Judge Pollack, told you that he had done business deals, his underwriting firm had mutual business operations and mutual business interests with Karen & Company and, when he was negotiating those interests, important business matters, he dealt with Vanasco, not with Azzarone.

In passing, Azzarone was the front man. Of course, Azzarone signed the tax returns. Front men sign everything. That is why they are there.

Michael Karfunkel did not sell the thousand shares of Select stock obtained as collateral in the Gardner loan because there was no one to buy it. There were a handful of Anfang customers who were put into this stock but the rest of the buys and sells on that chart were back and forth between Alan Segal's accounts and Karfunkel knew very well that, at the end of every day, he had to settle with Segal and he couldn't be selling

the stock to Segal, and there was no one else around to buy it.

Just as in May, the transactions were back and forth between the Barker accounts. That is a pegged, manipulated, fabricated market.

Michael Gardner sold the stock short after the SEC investigation had been called to his attention and after he had learned that stock was going to be placed in his name and I guess his lawyer admitted consenting to that, because, once the SEC, he knew, looked into Select Enterprises, the stock was going nowhere but down and off the sheets.

You represent the community from which you have been drawn and in a larger sense you represent all the persons in this country, because of New York's central location as the core and backbone of the securities market. The standards of honesty to be required in the securities transactions are those which you will decide upon and apply in the course of your deliberations.

On March 3, 1970, at Robert E. Ford's offices, Brinlee and Vinson were there and Joe Boyd and Ed Goodloe were there and Brinlee and Vinson were signing the warranty deed; they were not clients of Robert E. Ford.

Ford went to California in April. He met

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Farmer Brown. They were not his clients, either.

It is interesting. You have been told to reject out of hand the testimony of convicted felons without consideration as to whether or not their present circumstances point the other way and yet it is not cricket, it is not diplomatic for even an educated lawyer or an accountant to inquire into the background of someone who is signing his name to a $25 million warranty deed.

People do not, in social conversation and in casual acquaintances, acquaintanships, ask such questions, but you may find, and if you decide to apply the standard, you may require that in communications with investors, coming across the country that are signed by accountants, at least, think about what you would would have read as the investor if attached to the footnote to the California land it said, "This $25 million parcel of land is represented by Hoyt Brinlee's warranty deed, a convicted felon, who has promised us a title insurance policy. The company's lawyer, Robert E. Ford says he thinks he is crazy in signing such a deed."

Think about whether or not the standards of honesty in important documents require somebody to ask those questions. Every witness who got on this witness stand for your benefit was asked if he was a convicted

felon and that fact was put out front and it was put out front so that you might listen with that extra measure or care where appropriate. The standards of honesty and dealings in securities require no less. They require lawyers to ask and to inquire into the background both directly and perhaps indirectly. That is what Dun & Bradstreet and credit reporting agencies are for, to make an inquiry, to see if a warranty deed is worth anything more than the $1.10 cost at the stationery store and perhaps some ink.

Somebody once wrote that the lawyer's pen and the accountant's pencil are instruments capable of inflicting pecuniary loss in a much more efficient and effective fashion that a sledgehammer or a crowbard, and of course they are.

(Continued on next page.)

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When the bankers and investors in the country read a certified balance sheet they are entitled to rely on the fact that it states the truth with some degree of accuracy.

You might recall that in the course of your selection as jurors to sit in this trial, after specific questions were put to you Judge Pollack asked if there was anything else in your background that you think you should call to the lawyers" attention which might bear on your qualifications to sit as a juror. That's not an undiplomatic way of asking somebody about their background. That's not an inappropriate question, even to put to a client.

Let's talk about predictions of the future and historical performance for the moment. Let's talk about the difference between how much mica can sell for in the years to come, the biggest pile of scrap mica which has been available for sale. You can ask the witness, "How much did you sell last year? How much did you sell the year before? How much did you sell the year before that? How much money do you have in cash? Tell me the historical fact."

That's why balance sheets generally, as Mr. Barnett told you, carry assets at cost. When cost is

difficult of determination a genuine effort must be made to assess the fair market value, what it would have cost if you paid cash for it.

He also acknowledged on cross-examination, and then again on redirect examination, that the accounting profession, where cost is difficult of determination, "If you can't tell me what you paid for it, tell me what the fellow who sold it to you paid for it. What was his cost?"

Ask yourselves if it made a difference as to investing in Select stock if you knew about it: mica mines, $10,000 to $19 million; California land, zero to $25 million; oil and gas, $40,000 to $5 million.

Whether or not someone deliberately closed their eyes by not asking that question which an accounting book for college students suggests should have been asked --

Mr. Rappaport's attorney argued that Mr. Basile of Iselin-Jefferson Corporation gave up nothing for those 15,000 shares of stock which he was given shortly after the signing of the contract, but omitted to tell you what was read yesterday -- perhaps in the depth of the hour and a half summation it was lost -- but you will recall that Mr. Basile advanced next week's payroll to Mr. Sherman

for signing that contract --

MR. BERGER: Objection, your Honor.

MR. MacDONALD: Making no commitments to future advances beyond that week.

I also call to your attention the fact that in his summation he neglected to mention that Mr. Sherman acknowledged that all of the exhibits set forth in that contract -- let's think for a minute now. Here's where the appropriate care should be taken of the witness. Mr. Sherman was Mr. Rappaport's friend and his father's friend. His father worked for him and he had known him since he was a young man. He testified that the negotiations had been going on without his direct knowledge, but with his authority by Rappaport, January and February, and that on that evening, after he had come back from Chicago at the hotel he was told, "Well, your Business is going to be sold, sir, for 500,000 shares of Select Enterprises", and he said, "That sounds like a good price", and accepted the offer. It was not communicated to date to anyone else on his board of directors, and that was a genuine contract which he had authorized Mr. Rappaport to negotiate on his behalf without Alan Segal. Pause to reflect on whether or not the largest inducement for signing that contract was his getting his payroll paid the following week by those 15,000 shares delivered to Iselin-Jefferson;

pause to consider whether that contract is exactly as it was alleged in the indictment, false in all respects, including the absence of the various attachments that wererecited and are to date non-existent; pause to consider whether you think it really was an agreement by Mr. Sherman to sell out a company that was 30 years old without talking to anybody else in the company.

Mr. Schleger's attorney said that there was no proof that Schleger was Segal's accountant. I read you from the SEC minutes:

"Q Was anybody else in the office besides Mr. Sherman?

"A Mr. Segal.

"Q Alan Segal?

"A Alan Segal.

"Q Did he take part in the discussions with you?

"A He took part in some of them.

"Q Will you describe your relationship with him; was it personal or business?

"A I would say mostly business. From a point of view of my being an accountant he would ask me over a period of years what do I think of this financial statement or send it up to my office and

ask me to review it, or ask me to do something to that extent.

"Q Do you do his tax returns?

"A No. I have never done his tax returns."

Don't depend on Alan Segal but on Mr. Schleger's own words. Read them:

Just as Anfang told you, he had agreed to say that he delivered the documents to Anfang at the bar and that Alan Segal was not at the meeting.

Roger Bissett signed an opinion letter in January, 1970. He saw a contract. He drafted it. The contract provided that 1.156 million shares of Select stock could be sold for $40,000. Whether or not the Grube contracts were prepared and signed in January or prepared and signed in March, what did they tell Mr. Bissett who drafted them as well? What was the intention of Mr. Boyd and Mr. Grube in respect of that stock? The contracts provided that that stock would be sold and pledged in the marketplace, and the stock which was not registered in several counts of the indictment, one of the conspiratorial purposes was to sell unregistered securities. He drafted the contract which provided the mechanism for such sales.

He also knew that Titlow and Traynor were the owners of those shares and they were the ones that were

selling them to Boyd. He notarized the statement by Christine Smith in which she falsely stated she owned 110,000 of them. That was one of the statements that he filed, or caused to be filed, at the Nevada Secretary of State.

Mr. Slick, Mr. Viper, Mr. Shark, epithets hurled at a witness in the course of the second day of this trial -- there is no place in the administration of justice for such an approach. There is no place for substituting pure emotionalism for appropriate consideration of the tenor of the witness' testimony, the timber of his voice, the documentation which either conflicts with it or supports it.

The Government is confident that when you have had an opportunity to review the proof for each individual defendant in turn -- each individual is entitled to your separate consideration -- you will have no reasonable doubt that Select Enterprises was a sham from top to bottom, inside and out, and that these defendants contributed, each in their own fashion, each with their own special skill, to this effort to defraud.

Thank you.

THE COURT: Ladies and gentlemen, you will now recess and I will deliver my charge to you tomorrow morning

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UNITED STATES OF AMERICA

vs.

JOE TRUMAN BOYD, et al.

New York, October 17, 1975;
9.05 o'clock a. m.

(Trial resumed.)

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(Jury present.)

THE COURT: This stipulation is marked Court's Exhibit 54 and the papers are admitted accordingly.

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave the courtroom will do so now or remain seated until the completion of the charge.

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we have reached the concluding phase of the trial. The case will shortly be placed in your hands for your verdict. I want to express to you the Court's appreciation and thanks for your attentiveness, your patience during the trial and your promptness in this case as befits the triers of the facts in a case of the importance of this one to the parties and in any case before the United States

Courts.

I shall now give you your final instructions, which will guide your deliberations. Briefly, as you have been told, the defendants on trial have been charged by the Government with criminal offenses. It is your recollection of the facts that counts here and not the recollection of the counsel and not my recollection. It is for you determine the weight that will be given to the evidence, the credibility that you will extend to the witnesses who testified and the reasonable inferences that are to be drawn from the evidence that has been received.

You have heard the summations of counsel. If your recollection differs from that of counsel or from my recollection, if I should refer to any evidence, your recollection and the judgment of the facts that you make controls.

You must approach your duty with an attitude of complete fairness and impartiality, one in which you reach your decision solely on the evidence on the trial and without the slightest trace of sympathy, prejudice or bias for or against any defendant or the Government.

The fact that the Government is a party here entitlesit to no greater or no less consideration than that accorded to any party in a court of the United States.

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All parties are equals at this bar of justice.

It is my province to instruct you as to legal principles that are to be followed in the case and it is your duty to accept those instructions as they are given to you by me. On the other hand, it is your exclusive function to determine the facts on the basis of your consideration of the evidence and then, applying the instructions as to the law that I am about to give to you, to decide whether or not the defendant on trial before you is guilty of the charges against that defendant or not guilty.

You are the sole and exclusive judges of the facts. Your decision as to the fact is final and conclusive.

During the trial I have been called upon to make rulings on various qeuestions, such as when a question put to a witness was objected to or after a question was put and was answered, a motion was made to strike out the answer. I have sustained some objections and I have overruled others. I have struck out answers and exhibits that were offered. It is essential in the performance of your duty that when anything was ordered stricken from the record you put it out of your mind and disregard it. Similarly, if a question was asked and an objection to that

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question was sustained and no answer was given, the question itself should play no part in your consideration of the case.

No inferences as to guilt or innocence of any dfendant on trial or as to the credibility of any witness should be drawn from any rulings that I have made or from the fact that upon occasion I have asked questions of certain witnesses. My questions were intended only for clarification, to expedite matters. They were not intende to suggest any opinions as to guilt or innocence of any defendant or as to the credibility of anyone who appeared before you. It is neither my intention nor my function to favor one side or the other or to imply that I have any views as to the credibility of any of the witnesses or as to the guilt or innocence of any of the defendants. That is your sole and exclusive function.

Counsel, you must remember, not only have the right but, indeed, it is their duty to thoroughly investigat their case and interview prospective witnesses and to press whatever legal objections they believe should be asserted and to seek to bar evidence or proposed evidence on legal grounds where that is appropriate. In doing so, each lawyer is simply performing his sworn duty as a lawyer for a client and on behalf of his client.

As I have indicated earlier, the indictment here is but a formal method of accusing a defendant of a crime and bringing the case into court for trial and determination. It is not any evidence that a crime has been committed and no inference of any kind may be drawn from the fact of the indictment. The grand jury which returned the indictment was not asked to find out if the defendant was guilty or not guilty. That is solely your function.

There are two indictments in this case. They have been consolidated for trial. The indictments together name 17 defendants in all. Three defendants, Messrs. Segal, Wells and Joiner, have pleaded guilty. One defendant, Weber, took sick during the trial and is hospitalized and his case had been severed from this trial. One other named defendant was not called to this trial before you. Accordingly, there are only 12 defendants before you now.

No inference may be drawn against any defendant on trial because others named in the indictment pleaded guilty. The fact that three pleaded guilty is no evidence against those on trial and may not be considered in any way in determining the facts as to those who are before you. The 12 are the only persons as to whom you are called upon to render a verdict of guilty or not guilty

and, as I will explain to you shortly, in considering it, you may have to determine the nature of the participation, if any, of other defendants and alleged co-conspirators.

The indictment contains 53 counts against all of the defendants. Each count of the indictment charges a separate crime against each individual defendant. Each offense and the evidence applicable thereto should be considered separately from the other counts and within that count the evidence should be considered separately as to each of the named defendants. The fact that you may find all or some of the accused guilty or not guilty on any particular count should not influence your verdict with respect to any other defendant or with respect to any other count.

Each defendant before you has pleaded not guilty. That means that the Government has the burden of proving guilt beyond a reasonable doubt with respect to each crime that each defendant is accused of having committed. That burden never shifts. A defendant is under no obligation to undertake to prove his innocence. Indeed, a defendant does not have to submit any evidence at all. On the contrary, under our law a defendant is presumed to be innocent of any charge laid against him in the indictment. That presumption existed when the indictment was handed down

and the fact that a defendant did not take the stand under the law creates no inferences against him. A defendant's presumption of innocence remains throughout the trial and in your deliberations. It is a presumption which is sufficient in itself to require an acquittal of a defendant unless you, the jury on all the evidence are convinced of his guilt beyond a reasonable doubt.

A reaonable doubt is one that arises out of the evidence in the case or the lack of evidence. It is a doubt which is substantial and not merely shadowy. A reasonable doubt is one that appeals to your reason, to your judgment, to your common sense and to your experience. It is not an excuse to avoid performance of an unpleasant duty. A reasonable doubt is such as would cause prudent people to hesitate before acting in matters of importance to themselves. Putting that a litle differently, if you are confronted, as indeed you are here, with an important decision and, after reviewing all the factors that are pertinent to that decision, you find yourself beset by uncertainty and unsure of your judgment, then you have a reasonable doubt. Conversely, in that same situation if you have taken into account all the elements that pertain to the problem and you find you have no uncertainty and no reservation about your judgment, then you have no reasonable

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doubt.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or proof beyond all possible doubt. If that were the rule, few persons, however guilty, could ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any fact which, by its nature, is not susceptible of mathematical certainty. So, that kind of certainty, as I have tried to indicate, is not the test. You are going to have to rely on your own common sense and general experience in evaluating the evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth in the facts of the case. One is direct evidence, such as the testimony of an eyewitness or a participant. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-exisence of certain facts. In order to prove a fact by circumstantial evidence, there must be positive proof of some fact which, though true, does not itself directly establish the fact in dispute but does afford basis for a reasonable inference of its existence. The fact or facts upon which it is sought to base an inference must be shown and not left to rest in conjecture and when shown

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it must appear that the inference drawn is the only one that can fairly and reasonably be drawn from the facts and that any other explanation is fairly and reasonably excluded.

A common example given to juries of circumstantial evidence, in explanation of what I have just said, is the following:

Suppose at the time that you came into court this morning, the sun was shining and there were no clouds in the sky and when you came into this trial courtroom the shades were drawn and the blinds were down so that you couldn't see outside and, then, pretty soon somebody came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat. You haven't been outside in the meantime. When you left outside, it was clear but when these people came in with their dripping umbrellas and raincoats, something may have happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat that it is raining outside. Thus, circumstantially you would infer from a fact, the dripping raincoat and umbrella, some other matter -- the rain outside. The mind is led circumstantially from a fact to reach another fact. That will give you an illustration of what circumstantial evidence is

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and what it might lead to.

It is not necessary that the participation or lack of participation of a defendant in any crime be shown by direct evidence. The connection may be inferred from such facts and circumstances as legitimately tend to sustain that inference.

In this case, of course, each side has produced both direct and indirect or circumstantial evidence. The Government contends that its evidence establishes each defendant's guilt. Each defendant contends that no evidence has overcome the presumption of his innocence and that, at least, there is a reasonable doubt of his guilt. You apply to all the evidence the same standard of proof. It must satisfy you of the guilt of the defendant beyond a reasonable doubt or else you must acquit that defendant.

In evaluating the evidence which has been placed before you, you will determine the reliability of the witnesses you have heard and the extent to which you can count on any or all of them for accurate accounts of the facts. You have had an opportunity to observe the witnesses as they have testified. You want to be asking yourselves and thinking, together, how each witness impressed you. Did the witness appear to be truthful, candid, frank, forthright, or did the witness seem to be

evasive or shifty or suspect in any other way. Did the witness appear to know what he was talking about and did he impress you as having a purpose to report his knowledge to you truthfully and accurately. Was he consistent or self-contradictory. How did the manner and matter of his direct testimony compare with his manner and matter of testimony tested on the cross-examination.

You should consider not only the intrinsic persuasiveness of each person's testimony by itself but its setting in the circumstances of the whole case -- for example, the degree to which any particular item of testimony is corroborated or contradicted by other evidence in the case -- and all such things you will test by your own mature judgment about life, about people, about human behavior.

A witness my be discredited or, as we say, impeached by contradictory evidence or by evidence that at other times he made statements inconsistent with his testimony here on the witness stand.

You should consider, among other th ings, the question of interest or motive. The witnesses have identified their backgrounds and associations. You may wish to consider whether the witness may have had inducements or incentives or motives to shade the truth or has

biases of one kind or another that may have led the witness, consciously or not, to give you less than a completely accurate account of the facts he purported to portray.

If you believe a witness has wilfully sworn falsely before you, you are free to disregard all his testimony or to accept and credit such parts of it as your judgment dictates should be accepted.

The testimony of an informer and that of an accomplice who provides evidence against a defendant on trial must be examined and weighed by the jury with greater care and caution than the testimony of an ordinary witness. The fact that these witnesses have pleaded guilty or that they may have motives for testifying falsely does not necessarily show that they were testifying falsely. The unsupported testimony of an accomplice, if credited by the jury, is sufficient on which to convict a defendant on trial when the Government has sustained its burden of proof.

Prior conviction of a felony does not render a witness incompetent to testify but is merely a circumstance which you may consider in determining the credibility of the witness.

A defendant on trial who has testified is to

have his testimony judged in the same way as that of any other witness. A defendant who testifies has a deep personal interest in the outcome. However, it by no means follows that simply because a defendant has a vital interest in the end result he is not capable of telling a truthful, candid version of the facts. It will be for you to make the judgment of his credibility under all the facts and circumstances in evidence.

The statements of a witness given under oath before trial in a hearing or proceeding or in a deposition subject to the penalty of perjury, which statements are inconsistent with the witness' trial testimony, are to be considered as evidence of the truth of the matter asserted, which the jury may consider with all the other evidence in the case. However, if the prior inconsistent statement was not under oath, it may be considered only for impeachment of the truth of the trial testimony.

If the testimony of a declarant was given before the Securities and Exchange Commission -- a declarant is a person who speaks, declares something -- and that testimony was given under oath under penalty of perjury and in it reference is made to others than the declarant, it may only be considered as against such others if you should find that there was a conspiracy, that the

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party named in such testimony has, by independent evidence, been shown to be a member of the conspiracy and the statement concerning him was made in the course and in furtherance of the conspiracy and its objectives.

There has been testimony here to the previous good character of the defendant Bissett and Barnett, their reputation for truth and honesy. You should consider such evidence of good character together with all the other evidence in the case in determining the guilt or innocence of the defendant. Evidence of good character, if you believe it, may in itself create a reasonable doubt where, without such evidence, no such reasonable doubt would have existed but, if upon all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit a defendant merely because you believe he is a person of good repute in the community in which he mov

The testimony of a character witness is not to be regarded by you as expressing the witness' personal opinion of the defendant's character. It is only a reflection of a reputation in the community. Testimony o character reputation is not to be taken by you as the witn opinion as to the guilt or innocence of the defendant. Th

guilt or innocence of the defendant is for you and you alone to determine. Consequently, you may consider whether those with whom the defendant came in contact previously were not informed or may have been misled and that the defendant did not reveal to them matters bearing on his character. This is a matter for you to determine from all of the evidence.

The 53 counts of the indictments fall into two major classes. Count 1 charges a conspiracy. The remaining 52 counts, which I shall call the substantive counts, charge all the defendants with separate violations of the particular United States statutes specified in Count 1.

You may request copies of the indictments and may have them with you after the case has been submitted to you.

Count 1, the conspiracy count, charges that between October 1, 1959 and February 10, 1975, when the indictment was returned, all the defendants and co-conspirators conspired to violate the federal mail and wire fraud statutes, the Securities Act of 1933, and the law which prohibits false statements to federal agencies, such as the Securities and Exchange Commission.

The indictments charge that the object of the

conspiracy was to obtain control of a shell corporation, here Select Enterprises, Inc., without any substantial assets, to inflate artificially its price and to sell, pledge and distribute the corporation's shares at enormous profits to members of the public without providing material information required to be furnished by law.

As a practical matter, it is impossible for the average investor to differentiate between securities of little or no value, those of high speculative nature and those offering at least reasonable prospects of a satisfactory return on the investment. He cannot, himself, make such distinctions because he is unable to make a personal investigation of the operations and financial condition of the company issuing the stock. He must, therefore, rely upon available oral and written information about the company, its financial condition, its assets, its management, its operations, its products, its resources, its prospects and the terms and conditions with respect to its securities.

The Securities Act of 1933 which Congress enacted in recognition of these facts and of the further fact that sales of securities often involve the use of the mails and other interstate facilities -- as, for example, a telephone -- proceeds on a philosophy of full and fair

disclosure of all material facts to prospective purchasers of securities.

It does th is so that the public will have access to information necessary to make a truthful, realistic appraisal of the merits of the securities offered for sale and thus exercise an informed judgment in deciding whether to buy them.

The Securities Act accomplishes this objective in two ways that are directly relevant to the indictments here:

By Section 17, which the indictments refer to as Title 15, United States Code, Section 77-Q, it prohibits schemes to defraud, untrue statements and fraudulent practices in the interstate sale of securities.

By Section 5, which the indictments refer to as Title 15 of the United States Code, Section 77-E, it requires that before any security is offered to the public, the corporation issuing the security must file with the SEC -- Securities and Exchange Commission -- a registration statement making a full and accurate disclosure of material facts relating to the company's properties, its business operations, its management, its principal stockholders, its financial condition, supported by certified balance sheets and profit and loss statements and the

amount and types of stock outstanding.

The registration of a proposed sale of stock by people in control of a company will, of course, also reveal to the public whether these controlling people intend to sell their own shares, a fact that may be of great importance to prospective or actual shareholders who may rely heavily upon the continued confidence of these controlling people in the company and in the value of its securities if any.

I have spoken of the conspiracy charged in Count 1. What is a conspiracy? It is a combination or agreement of two or more persons or concerted action by two or more persons to accomplish a criminal or unlawful purpose -- in essence, a partnership in crime.

A conspiracy presents a greater potential threat to the Government and to society than the lone wrongdoer. That is why it is a separate crime. Concerted action for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which the individual acting alone could accomplish. Moreover, group association increases the likelihood that the criminal object will be successfully realized and renders detection more difficult than in the instance of the sole wrong doer.

It is because of these and other reasons that Congress made a conspiracy or a concerted action to violate a federal law a crime entirely separate, distinct and different from the actual violation of the substantive law which may be the object of the conspiracy.

The gist of the crime is the unlawful combination or agreement or scheme to violate the law. The success or lack of success of the plot or agreement or scheme does not matter. As I have already told you, a conspiracy is a crime entirely distinct and separate from the substantive crime itself.

In order to prove the crimes alleged in Count 1, the conspiracy count, the Government must establish the following elements beyond a reasonable doubt:

First, existence of the conspiracy charged in the indictments;

Second, that it was part of the conspiracy unlawfully to violate the provisions of one or more of the statutes specified in Count 1;

Third, that the defendant you are considering knowingly and wilfully became a participant in the conspiracy; and,

Fourth, that at least one of the co-conspirators knowingly committed at least one of the overt acts set forth

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in the indictments in the Southern District of New York during the period of its existence.

If the Government fails to establish each of these elements beyond a reasonable doubt, you must acquit the defendant under considerawtion. If, on the other hand, it has established each element beyond a reasonable doubt, you must find that defendant guilty.

It is not necessary that a conspiracy be established by direct evidence in order to convict. In fact, it can rarely be proved in that fashion for the reason that people seldom sit down and sign agreements to engage in an unlawful scheme or activity, much less to have them notarized or made known to the public. That type of conduct would be extraordinary. It is sufficient if two or more persons in any manner impliedly or tacitly come to a common understanding to violate the law. It is not necessary that the persons charged enter into a formal agreement or that they state all the details of their agreement or scheme or how it is to be effectuated.

Conspiracy is generally a matter of inference to be drawn from the conduct of the persons charged. Actions may often speak louder than words and a defendant's participation in a conspiracy may be inferred from such facts and circumstances in evidence as appear to you

logically to support or sustain such an inference. It is sufficient that it be shown beyond a reasonable doubt that the defendant and the co-conspirator came to a mutual understanding to accomplish an unlawful act.

(Continued on next page.)

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A 864 To determine whether a conspiracy existed, you piece together the independent evidence relating to each alleged conspirator and determine, looking at the whole picture, whether the acts, conduct and statements, establish to your satisfaction beyond a reasonable doubt that there was a conspiracy.

If, for example, there was concerted action among several persons, with each of them doing something related to the acts of others, all of which contributed in the same or similar manner toward the accomplishment of some unlawful objective, such evidence would support the inference that those persons had conspired together to accomplish that unlawful purpose.

An unlawful agreement may exist even though the individual conspirators may have done some acts in furtherance of a common unlawful purpose apart from, and unknown, to the others.

If you do conclude that a conspiracy as charged did exist, you must next find that what the conspirators intended to do would have violated one or more of the following statutory provisions:

The first provision states that: "Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property

by means of false or fraudulent pretenses, representation or promises for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service or knowingly causes to be delivered by mail according to the directions thereon, any such matter or thing" shall be guilty of a crime.

The second of the provisions states: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire communication in interstate commerce, any writings or sounds for the purpose of executing such scheme or artifice shall be" guilty of a crime.

The third of the laws stated in the indictment as an objective of the conspiracy, Section 17(a) of the Securities Act of 1933 states that: "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to employ any device, scheme, or artifice to defraud,

or to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Any person who wilfully violates this provision is guilty of a crime under Title 15, United States Code, Section 77q.

The fourth provision, Section 5(a) of the Securities Act of 1933 states that: "Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or delivery after sale."

Any person who wilfully violates this

provision is guilty of a crime under Title 15, United States Code, Section

The last, or fifth provision, states that: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" shall be guilty of a crime T. 18,Section 1001, U.S. Code.

If you conclude that a conspiracy as charged did exist, you must next determine whether the defendant you are considering was a member, that is, whether he participated in the conspiracy wilfully, with specific criminal intent, with knowledge of its unlawful purposes and in furtherance of its unlawful objectives. An act or a failure to act is knowingly done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. An act or a failure to act is wilfully done if done voluntarily and intentionally and with bad purpose either to disobey or disregard the law.

It is important to remember that in deciding

he became a member. Nor is it required that he knew all the members of the conspiracy.

It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify an inference of knowledge on his part. Omniscience regarding every aspect of the conspiracy is not indispensable to a finding of knowledge of the illicit purposes and the nature of the operation of the conspiracy. Legitimate and reasonable inferences of such knowledge can be drawn from circumstantial as well as direct evidence, and as I have explained, it is immaterial whether the defendant knew the full extent of the conspiracy and all of its activities and actors.

In determining whether the defendant was a member of the conspiracy, you must determine whether he participated with knowledge of its unlawful purpose. Knowledge is a matter of inference from the facts proved. As I said, it is not necessary that one be fully informed as to the details and scope of the conspiracy, or be acquainted with all of the conspirators, in order to justify an inference of knowledge. The question then is: Did he join the others with awareness of at least some of the basic purposes and aims of the conspiracy? If so, then he adopts as his own the past and future acts

of all the other conspirators.

The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he entered into the conspiracy after it was formed, or if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

I want to caution you that mere presence or association with one or more conspirators does not make one a member of a conspiracy. Nor is knowledge of a conspiracy without participation therein sufficient to constitute membership. What is necessary is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

In short, a person becomes a member of a conspiracy by associating himself, even though informally, with a common plan or scheme, knowing the central aim or purpose, and intending to aid in bringing about the success of the plan or scheme.

If you find circumstances of intrigue or deviousness or attempts by the defendants to conceal the true nature of a transaction, this may be considered as circumstantial evidence of knowledge of unlawful purpose.

So, too, any attempt to conceal or fabricate evidence may be considered by you as showing such knowledge.

Proof of several separate conspiracies is not proof of the single, overall conspiracy charged in the indictment unless one of the several conspiracies which is proved is the single conspiracy which the indictment charges. What you must do is determine whether the conspiracy charged in the indictment existed between two or more conspirators. If you find that no such conspiracy existed, then you must acquit. However, if you are satisfied that such a conspiracy existed, you must determine who were the members of that conspiracy.

If you find that a particular defendant is a member of another conspiracy, not the one charged in the indictment, then you must acquit the defendant. In other words, to find a defendant guilty you must find that he was a member of the conspiracy charged in the indictment and not some other conspiracy.

An agreement to accomplish an unlawful object does not cease to be a single conspiracy because it continues over a period of time or because there exists a time gap in the proof or a change in the membership.

The agreement may continue for a long period of time and include the performance of many transactions.

New parties may join the agreement at any time while others may terminate their relationship. The fact that the parties are not always identical or were not in direct contact does not mean that there are separate conspiracies. While the conspiracy may have a small group of core conspirators, other parties who knowingly participate with these core conspirators and others to achieve a common goal may be members of an overall conspiracy.

In essence, the question is, what is the nature of the agreement? That is for you to determine after examining all the evidence.

If you find the government has sustained the element as to a defendant's participation, we reach the final element. I have already mentioned that the fourth essential element of the crime of conspiracy is that an overt act intended to effect the object of the conspiracy be committed by at least one of the co-conspirators after the unlawful agreement has been made.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the objective of the conspiracy. The purpose of requiring proof of an overt act is that while parties might conspire and agree to violate the law, yet they may change their

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minds and do nothing to carry it into effect, in which event it will not constitute an offense. The overt act to further the objective of the conspiracy can be a perfectly lawful act. It need be neither a criminal act nor the very crime which is the object of the conspiracy. It is any act or step in the carrying out of the plan.

It is not necessary for the government to prove that each member of the conspiracy committed or participated in one particular overt act, since the act of any one conspirator done in furtherance of the conspiracy becomes the act of all the other members.

Thus, the government is not required to prove all of the overt acts as alleged in the indictment. It is sufficient if it proves the commission by any co-conspirator of at least any one of the acts in the Southern District of New York in furtherance of the objectives of the conspiracy within the period of the existence of the conspiracy.

I will now call to your attention the overt /3 acts that have been set forth. When you get the indictmen you will be able to read them again for yourselves.

The indictment charges as overt acts in furtherance of the said conspiracy and to effect the objects thereof the defendants and their co-conspirators

committed the following overt acts among others in the Southern District of New York and elsewhere:

(1) In or about January 26, 1970, the defendant Boyd carried from Reno, Nevada, to New York, New York, 1,036,603 shares of Select stock, delivered 100,000 shares to the defendant Segal in nominee names, and then locked the balance into a safe deposit box under their control. The safe deposit box was locked by two different locks. Boyd and Segal each had one separate key and the box could not be opened without both keys.

This particular overt act, before I go any further, illustrates what I said before. All of the things that I have just read to you could be considered perfectly lawful acts, but if they were part of a scheme to carry out a conspiracy and in furtherance of that scheme and conspiracy, then they become overt acts to show that the conspiracy is in operation.

The second overt act charged:

(2) On or about February 4, 1970, co-conspirator Azzarone filed an application form with the National Quotation Bureau (pink sheets) for the purpose of publishing artificial prices for Select stock.

(3) On or about February 11, 1970, the

defendant Segal delivered 3,000 shares of Select stock to the president of Mann & Company.

(4) On or about February 26, 1970, the defendants Rappaport, Segal, and Schleger, together with co-conspirator Sherman, perpared, backdated, and delivered documents, purporting to be contracts evidencing true business activities of Select to the SEC through co-conspirator Azzarone and others.

(5) On or about March 1, 1970, the defendant Segal flew to Texas to obtain the signatures of the defendant Knisely on the aforementioned backdated contracts.

(6) On or about March 9, 1970, the defendants Boyd and Weber delivered signed copies of the aforementioned backdated contracts to the SEC at which time Boyd made perjurious statements as to such false documents.

(7) On or about March 28, 1970, the defendants Boyd, Ford, Barnett, and Knisely fraudulently prepared, issued, and caused the issuance of false and misleading certified financial reports to shareholders of Select and the trading public.

(8) On or about April 17, 1970, after the termination of the SEC suspension of trading in Select stock and for the purpose of promoting continued distribution and trading in such stock on behalf of all

defendants, the defendants Boyd and Ford supplied false and fraudulent information to the SEC.

(9) In or about the week ending May 9, 1970, the defendant Wells provided false and misleading information as to the Select trading market to purchases, banks, pledgees, and other lenders as well as to the SEC.

And then, finally, each of the mailings, telephone and telegraph usages alleged in counts 2 through 28 of this indictment are repeated and realleged herein as overt acts.

Since I will have given you a copy of the indictment which sets forth each of the mailings, telephone and telegraph usages in counts 2 to 28, I will hereby incorporate into this charge by reference as if fully set forth now, in order to save the necessity of reading each one of them at this time. You will have the opportunity in the jury room to read them. I will give you two examples which will show you what it is that I am referring to.

Count 2, under date of February 10, 1970 refers to a letter which came from Weis, Voisin, Cannon, Inc., Philips, Appel & Walden and was addressed to Morris Tesser, 621 Brighton Beach Avenue, Brooklyn, New York. I believe we had Mr. Tesser here before you, and that letter is

alleged to be a step in the carrying out of the conspiracy and, therefore, an overt act.

Now we take another one, count 8, for example, a letter dated February 27, 1970, written by Nevada National Registrars, Inc. to Orvis Brothers at 30 Broad Street, New York, New York. That letter is one of the exhibits in evidence and is claimed to have been a step in furtherance of the objectives and in the course of the alleged conspiracy.

Suppose I just pause to give you an opportunity to relax in your place before I go on with the remaining counts. I have completed my discussion of the conspiracy count, and I will take up the remaining counts in just a moment. You may relax.

(Pause)

I now take up the substantive counts.

Counts 2 to 28 are the counts that contain the references to letters, and telephone messages, they are the mail and wire fraud counts. For some reason unknown to me we refer to the telephone as a wire communication. We know we have satellites without wires these days, but that's a wire communication.

To establish that the defendants are guilty of the crime of mail and wire fraud as charged in counts 2

to 28, the government must prove beyond a reasonable doubt as to the count you are considering each of the following elements:

1. That on or about the dates alleged in the indictment the defendant under consideration devised or intended to devise a scheme or artifice to defraud or to obtain money by fraudulent pretenses or representations.

2. That he did devise or became a party to such a scheme or artifice knowingly and wilfully, with knowledge of its fraudulent nature and with intent to defraud.

3. That he did use, or cause another to use, for the purpose of executing a scheme or artifice, transmissions, depending upon the count being considered, either over the telephone or through the United States Postal Service.

Before I go forward I want to call the following to your attention: What I have just read to you refers to action taken by the defendants and you may be wondering whether that means that each defendant must have sent a letter or had a telephone talk. It is not necessary for the government to show that the defendant you are considering himself physically committed the crimes alleged in counts 2 to 28 or, indeed, in counts 28

to 53. Section 2 of Title 18, United States Code, provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find beyond a reasonable doubt that a codefendant committed the offense, and that the defendant aided and abetted him.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourself these questions: Did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his action to make it succeed? If he did, then he is an aider and abettor.

There is another alternative basis upon which you may find a defendant guilty on each of the substantive counts in which he is named even if you are not satisfied as to that defendant that each of the elements I have previously described for those substantive counts have been proved beyond a reasonable doubt.

This alternative basis is as follows:

If you find beyond a reasonable doubt that the substantive offense alleged in the substantive counts were committed by one or more members of the alleged conspiracy, that the defendant you are considering was then a member of that conspiracy, and that the acts which constituted those substantive offenses were done in furtherance of a portion of that conspiracy of which that defendant was a member, and that the defendant might reasonably have foreseen that those acts would be done in the course of and to further that conspiracy, then you may find that defendant is guilty of the substantive offenses alleged in the substantive counts in which he is named, even though he did not otherwise personally participate in the acts constituting those offenses or did not have knowledge of them. That follows from the theory of partnership in crime.

So, as I read these essential elements to you of the mail and wire fraud and also of the securities law breach, and finally, of the false statements, where reference is made to action having been taken by a defendant, you will bear in mind that if his partner did it and he was a member of that partnership and it was done in furtherance and to carry out the objectives of the partnership, he is just as guilty as the co-conspirator who did it.

Now, I will go back and read to you the essential elements of mail and wire fraud as charged In Counts 2 to 28 so that this interruption and explanation will not have lost the thread in your minds.

The Government must prove beyond a reasonable doubt as to the count that you are considering each of the following elements:

That on or about the dates alleged in the indictment, the defendant under consideration devised or intended to devise a scheme or artifice to defraud or to obtain money by fraudulent pretenses or representations;

Two, that he did devise or become a party to such a scheme or artifice knowingly and wilfully, with knowledge of its fraudulent nature and with intent to defraud;

Three, that he did use or cause another to use, for the purpose of executing the scheme or artifice, transmissions, depending upon the count being considered, either over the telephone or through the United States Postal Service.

The first element of the mail and wire fraud counts is the existence of a scheme or artifice to defraud. The language describing the first element is almost self-explanatory. A scheme or artifice is merely a plan for

the accomplishment of an object. Such a scheme or artifice may be found to exist without evidence of any formal action to make effective.

Fraud is a generic term which embraces all the many, many means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another by false representations or suggestions or by suppression of the truth. Thus, a scheme or artifice to defraud is any plan or device by which one seeks to induce another to act in a way detrimental to his interests by means of the representations of a material fact which are false and untrue. Such representations may be made in two ways -- by statements of a material fact which are just not true and by the omission from a statement purporting to state a particular fact or facts of other material facts which are necessary to a proper understanding of the truth of the matters stated.

In other words, once having undertaken to state a fact or facts, there is an obligation on the one who does so not to give such a distorted picture of them as to make the statements misleading concerning what the actual facts really are. Sometimes a half-truth is no better than an outright falsehood and a fraudulent representation may be effected by half-truths calculated

to mislead. Having chosen to speak, there is an obligation to state all the facts which are necessary to a proper understanding of th particular subject matter which is being covered.

A statement, although literally true, is nonetheless false if when interpreted in the light of the effect it would produce on the minds of those whom it was calculated to influence, it would create a false impression of the true state of affairs.

I have told you that the second element of the mail and wire fraud charges is the requirement that the act should be wilfully and knowingly done. This second element of the mail and wire fraud charges which the Government must establish beyond a reasonable doubt is that when and if the defendant did the acts with which he is charged, he acted wilfully and knowingly -- the defendant or his partner in crime, if there be any.

The word "knowingly" means that the defendant acted purposely and deliberately. As used here, "wilfully" means intentionally, with a bad purpose and specific intent to do that which the law forbids.

In other words, to convict on any particular substantive count, you must find that as to that count the defendant you are considering purposely did, himself or

through his partner, if he had one, the acts with which he is charged and did not carelessly or negligently or through inadvertent error or mistake or something of that nature do the act.

Under these statutes, a false representation or omission to state a material fact does not amount to a fraud unless it is made with fraudulent intent. However, misleading or deceptive a plan may be, the use of the mails or the telephone to execute it does not constitute a crime if the plan was devised in good faith. Honesty and good faith on the part of a defendant is always a good defense to the charges in these counts and an honest belief in the truth of the representations made by him is a good defense, however inaccurate the statements may turn out to be.

The significant fact is the specific criminal intent and the bad purpose with which the defendant acted. The mere fact that a statement may be incorrect or even a gross misrepresentation of the facts does not amount to a fraud in the law unless the statement was made by the defendant knowingly and wilfully and with the specific intent to deceive.

The question of the defendant's knowledge and his intent and his wilfulness is a question of fact you

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must decide in this case but, unlike most other questions of fact, it involves what is in a person's mind or the purpose which motivates him in a given course of conduct. Obviously, we have not yet devised, and perhaps it is well if we never do, an instrument to record what goes on in a man's or a woman's mind. Rarely is direct proof available that a man has knowledge of a particular fact or has a particular purpose in mind when he acts. On occasion he may write a letter or admittedly have knowledge that a statement was false or acknowledge orally that he had an evil or forbidden purpose, but that is rare. Plainly, it is the exception rather than the rule.

Thus, direct proof of the knowledge of a falsity and a wilful and wrongful intent is not necessary. Usually, such knowledge or purpose is established by circumstantial evidence and determined from the acts and conduct and all the circumstances and the natural inferences that you may draw therefrom.

Fraudulent intent may be inferred from the intent of one party to a transaction to deprive another of the chance to bargain with the facts before him. Thus, where false representations are made as to the quality, adequacy or price of goods or property, fraudulent intent may be inferred if the jury so decides from the fact that

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the victim was made to bargain without facts obviously essential in deciding whether to enter into the transaction.

I have previously instructed you on the meaning of false statements and misrepresentations. Remember that they may be made either by statements which are direct untruths, such as to say that something happened when it did not, or by statements of half-truths leaving out a part of the facts necessary to an understanding of the complete truth.

Remember, also, that the misrepresentations must be material; that is, of such a nature that it would tend to influence a reasonable person's decision whether to act or not.

If you find that the defendant under consideration knowingly and wilfully engaged in the scheme to defraud, you must then consider the next element of the offense charged, that is, whether the mails or telephones were used in furtherance of that scheme.

The Government alleges that the defendants mailed or caused to be mailed letters relating to Select stock and its distribution, sale and transfer. It is also alleged that telephone calls were made to transmit information necessary to transactions in Select stock.

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It is not necessary that the matter thus communicated contain in itself anything criminal or objectionable or any misrepresentations or that disclose a fraudulent purpose of show that it was in furtherance of the scheme. The matter may be wholly innocent in itself. Nor is it necessary that the defendant under consideration personally mail, telephone or otherwise transmit the alleged matter. You need only find that the defendant caused the transmission by taking steps which he knew at the time might naturally and probably result in the use of the mails or telephone.

The next group of counts, Nos. 29 through 40, charge the defendants with 12 separate violations of Section 17-A of the Securities Act of 1933. Again, you will bear in mind what I told you about the means by which you can consider a defendant other than the one who actually acted.

To convict a defendant of any of these counts, you must find beyond a reasonable doubt as to the count you are considering each of the following elements:

First, that in connection with the offer or sale of the securities, the defendant engaged in a scheme or artifice to defraud or to obtain money or property by means of untrue statements of material facts or omis-

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sions to state material facts necessary in order to make his statements not misleading, or engaged in a transaction, practice or course of business which would or did operate as a fraud or deceit upon the purchasers of that security.

Second, that the defendant did so wilfully and knowingly; and,

Third, that the defendant used or caused to be used the mails or means of communication in interstate commerce in furtherance of the scheme.

Section 17-A which deals directly with securities fraud, is very similar to the mail and wire fraud statutes as to which I have already instructed you, and you will follow those instructions in considering the Section 17-A counts. In particular, you remember that false representations can be made either by statements of a material fact which are just not true or by the omission to state material facts which are necessary to a proper understanding of the matters stated, and you will also remember that a scheme or artifice to defraud is any plan or device by which one person seeks to induce another to act in a way detrimental to his interests by means of untrue representations as to a material fact.

Section 17-A, however, has the further require-

ment that the acts be done in connection with the offer or sale of any securities. I instruct you that Select stock is a security for purposes of Section 17-A.

I further instruct you that an offer or sale of a security includes every contract of sale or disposition of the security or of an interest in the security for value. Thus, for example, an offer or sale of the security occurs when a security is sold for money or when it is exchanged for property, such as a fur coat, or when it is pledged to secure a loan from a bank or other lender or when it is pledged to provide further security for an existing loan or debt.

Now, we are almost through.

Counts 41 through 51 charge the defendants with 11 separate violations of Section 5-A of the Securities Act of 1933. To convict a defendant of any of these counts, you must find beyond a reasonable doubt as to the count you are considering each of the following elements:

First, that the defendant unlawfully, wilfully and knowingly used or caused to be used the mails or interstate facilities to sell Select stock, or through such facilities caused to be carried the stock in connection with sales;

Second, that the Select stock sold was not

registered with the SEC, although required to be registered by the Securities Act of 1933.

So far as concerns the first element, I have already instructed you concerning the use of the mails and interstate facilities and you will apply those instructions here.

It was stipulated here that no registration was ever filed for Select Enterprises stock. The Government has contended throughout this case that the defendants caused to be sold or aided and abetted in the sale of unregistered stock in public offerings thereof.

Counts 41 through 51 involve mailings or interstate facilities.

A third and another essential element of this offense is that the defendant knew that the offer, delivery and sale of Select Enterprises stock required the filing of a registration statement and wilfully and knowingly caused the use of the mails or interstate facilities directly or indirectly in the sale or delivery of these unregistered shares. It is not necessary for the Government to establish that the defendant knew he was breaking any particular law or any particular rule. Here, as in other phases of this case, the significant fact is the particular defendant's state of mind. My instructions

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as to wilfulness, knowledge, specific intent and evil motive or purpose apply to these counts as well as to the others.

The law would exempt the transactions here involved if no public offering were involved. Offering shares through the pink sheets does involve a public offering and if you find that Select stock was so offered by Select through dealers who went into the pink sheets at its behest, a public offering is involved by an issuer.

We come now to the last two counts, 52 and 53, which charge the defendants with making false statements to the SEC -- the Securities and Exchange Commission.

The statute involved which I have already read to you makes it a crime knowingly and wilfully to use a false writing or document in a matter within the jurisdiction of any agency or department of the United States.

To convict on either of these counts, the Government must prove beyond a reasonable doubt the following:

First, on or about the dates specified in the Southern District of New York, the defendant you are considering did make or use the writing or document specified;

Second, such writing or document contained material false, fictitious or fraudulent statements or

entries;

Third, the defendant knew that the writing or document contained such material false, fictitious or fraudulent statements or entries; and,

Fourth, such writing or document was used in a matter within the jurisdiction of the department or agency of the United States, and the Securities and Exchange Commission is such an agency.

The mail, wire and securities fraud statutes and the false statements statute all involve the concept of materiality. The securities fraud statute employs the word "material" when speaking of a misrepresentation of a material fact or the omission to state a material fact. The falsity involved in mail or wire fraud or in a false statement to the SEC must likewise be material. A fact is material if it is one which would induce a reasonable person to act because of it; that is, if it affects conduct. For example, with respect to a securities fraud, a fact is material if it would induce a reasonable investor to purchase or to refrain from purchasing a security.

With respect to the false statement statute, a fact is material if it reasonably tends to affect the conduct of an investigation.

Proof of motive is not a necessary element of

the crimes with which the defendants are charged. Proof of motive does not establish guilt nor does want of proof of motive establish that a defendant is innocent. If the guilt of the defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be or whether any motive be shown but the presence or absence of motive is a circumstance which the jury may consider as bearing on the intent of the defendant.

Ladies and gentlemen of the jury, use your common sense in evaluating the evidence, the circumstances and the probabilities. Do not allow yourselves to be swayed or carried away or inflamed by Appeals to passion or sympathy. Suspicion and conjecture should not be substituted for proof or evidence. Suspicion and conjecture are not in evidence. You must maintain a calm, clear view of the case and not be sidetracked by anything or anybody from a fair, dispassionate consideration of the evidence in arriving at your resolution of the facts.

Under your oath as jurors, you cannot allow any consideration of the punishment which might be inflicted upon a defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon this Court. Your function is to weigh the evidence in the

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case and determine whether the defendant is guil ty or not guilty, solely on the basis of the evidence and the law.

You are to decide the case upon the evidence and the evidence alone and, I repeat, you must not be influenced by any assumptions, conjectures, sympathy or any inference not warranted by the facts unless proved to your satisfaction.

I want you to l isten to each other carefully in the jury room when you consider the matter. If you think you are wrong and somebody else is right, don't be embarrassed about changing your opinion but, remember, each of you has to decide the case for yourself.

Each defendant must be considered by you separately and each count as to that defendant must be considered separately.

A verdict of guilty or not guilty as to any count on which the respective defendant is charged, to be acceptable, must be unanimous. You may, if you wish, report your verdicts separately from time to time as you reach them, unanimously, if that will aid you in your deliberations or you may wait until you have concluded all of your deliberations.

The oath you took right at the outset really sums up what you are supposed to do in this case and that

is, without fear or favor to anybody, you will well and truly try the issues according to the evidence and the law as stated to you in this charge.

If you desire any of the exhibits, those will be sent to you in the jury room upon request. If you want any of the testimony read, that can be done, also.

Please do not communicate with anyone concern your deliberations about this case or how you stand, exce in writing, signed by your foreman, and he will be provid with a pencil and paper by the marshals.

Now, I have concluded my charge but I would like to take a moment to talk to the lawyers at the side bar, who may wish to call to my attention any matter that I have overlooked or where I may have misspoken, and I w therefore excuse you to go into the jury room, but not t discuss this case or commence your deliberations; just in there for a short recess while I take these legal mat up with the lawyers and then I will have you back for th concluding statement.

(The jury left the courtroom.)

THE COURT: I will now consider exceptions a requests.

Does the Government have any exceptions or requests?

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MR. MacDONALD: No, sir.

THE COURT: I will call upon the counsel for the defendants in the usual order.

Mr. Segal, are there any exceptions to the charge?

MR. SEGAL: Your Honor, my first exception would be with regard to the Court's statement in which it juxtaposed the failure of the defendant to take the stand with the presumption of innocence, as if the failure in some way was in derogation of presumption of innocence. I felt that that could have been clarified in the charge as requested.

My second request, your Honor, is that in giving the reasonable doubt charge to the jury, the Court included in its statement the fact that it is impossible to have no doubt or that there can be a mathematical certainty and I felt that by juxtaposing those two concepts, about the reasonable doubt and the fact that it is impossible to have no doubt, that the jury may not have gotten a clear view of reasonable doubt.

The third objection, your Honor, is with regard to the inference example, because I felt that where there is smoke there is a fire conclusion, there is no guide except evidence which legitimately can sustain the conclusion, as

the Court stated, gave them no clear idea of the inference, the circumstantial example. In that connection, I would object to the Court's failure to charge the two inference rule as proposed in the requests to charge made in court.

The main thrust of my objection, your Honor, would be in connection with the Court's description of Section 5 in connection with the explanation given in the conspiracy count. In that example of the potential statutes which the jury has to consider, the Court laid out those sections of the 1933 Act which are necessary and, in the Section 5 example, there was no relationship or explanation of the grandfather clause or the pre-33 registration which we have continued, or any explanation of in what way the shares of stock in this case may be either exempt from or subject to registration.

For the moment, I would move on to the Section 5-A example that the Court gave and the substantive counts toward the end of the charge. The Court indicated that while there was a stipulation that no registration statement was filed, there was no explanation that the defendants may have been operating under an exemption and, in fact, there is testimony in the transcript of Mr. Boyd in which in speaking with Mr. Hewitt he indicated a difference of opinion and, in fact, an ignorance of the fact that registra-

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tion was required for this type of a corporation, so that the contention has not been fully explained.

I think also, your Honor, and I would urge that the Court reconsider its Section 17-A substantive charge, or at least review it. As my notes give it, in the offer of sale or contract of sale of disposition of a security, the Court, I believe, stated that a sale occurs when it is sold for money, when it is exchanged for property, when it is pledged to secure a loan and as a further security for existing loan or debt.

I think that there is a case which may be squarely against that pledge idea that the Court has proposed, which is McClure versus First National Bank of Lubbock, Texas. It is a Fifth Circuit case, 497 Fed. 2 490, and I believe that the holding there is that the pledge of unissued stock as collateral does not constitute a sale within the Securities Act in the circumstance where the bank does not subsequently sell the stock, so that in an instance where a stock is held by the bank and is not disposed of, it cannot be said to have constituted a sale. That is the only holding, frankly, that I could find.

I don't know if any Second Circuit case exists in that regard but there is at least a Fifth Circuit case and I believe that the cite to the particular section that

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I am talking about would be about the last page or two of that opinion.

THE COURT: Is that all?

MR. SEGAL: Your Honor, under the grandfather clause situation, I am not certain but that the application which is made to the National Quotations Bureau specifically makes provision in that application which is in evidence, for the fact that there is some exemption which is relied upon in requesting the listing, so that that at least would be some evidence as to that incident. At least, we are contending that there was a proper use or a proper sale.

THE COURT: Is that it?

MR. SEGAL: I just have a few more items, your Honor.

My note is something about necessity for registration without instructing the jury whether or under what circumstances registration of the shares was necessary. I believethat in reciting Section 17 violation, the Court talked about a material fact and, of course, later in its charge the Court did explain what a material fact was. I just felt that in the Section 17 explanation, that an explanation of the material fact should have been given at that point.

The Court had been requested in my request

jbs

No. 17, I believe, in the last sentence, that is about independent evidence must be substantial. I believe that it may be of some assistance if the Court would consider that last full sentence of request No. 17 to include in any amendment to the charge.

THE COURT: I believe the charge adequately covers that in words and by implication, although not necessarily in your own words.

MR. SEGAL: Your Honor, in explaining the substantive counts, the Court indicated that there are two bases upon which the jury could find and one would be the aiding and abetting and the other would be in essence the Pinkerton theory. I am not sure, frankly, your Honor, whether or not the Court can charge the aiding and abetting, even though the indictment is silent as to that -- whether that is included --

THE COURT: That's the law. It is read into every indictment.

pgas

MR. SEGAL: With regard to the Pinkerton theory, it is complicated for lawyers, and I think maybe it is incomprehensible to laypeople, but in charging on that Pinkerton theory they may reach a conclusion -- I believe that it is impossible for a jury to distinguish between the need for individual consideration as to the substantive counts and whatever findings and protections it has to receive with regard to the conspiracy counts.

I have no further objections, your Honor.

THE COURT: I am going to call to your attention that neither you nor any defendant made any requests in respect of the grandfather's clause or appropriate requests on the subject of exemptions. I think it is a late moment to raise that kind of discussion, but if you can write out some brief indication of what you believe should be charged, and the circumstances are such that I do not require an examination of the law to determine the validity of your legal principles, I may give it further consideration by the time I come around to you a second time.

Mr. Stokamer?

MR. STOKAMER: I have nothing in addition to what Mr. Segal raised. I would like to join him in his requests.

MR. SEGAL: May I be excused for one moment, your Honor? I may be able to make a phone call that would help.

THE COURT: Yes.

Mr. Goldman:

MR. GOLDMAN: Are we deemed to have repeated the other requests and exceptions by other counsel? I think that would save time.

THE COURT: Yes, and you will be deemed also to have failed to present any requests to charge on the matters raised. It works both ways.

Anything else?

MR. GOLDMAN: Yes, your Honor.

I would except to your Honor's charge on accomplice. I believe you used the words "greater care or caution," and I believe that that diluted the standard.

THE COURT: How would you charge it?

MR. GOLDMAN: Extreme care and caution, or some words to that effect.

THE COURT: All right.

MR. GOLDMAN: Your Honor said, in effect, if the jury finds there is a conspiracy to commit any of the crimes in the first indictment, and an overt act committed in the Southern District of New York in furtherance of

that crime, that conspiracy, then you may find the defendants guilty.

I ask your Honor to charge specifically if they find there was a conspiracy to commit one of the crimes in that indictment, they must find that an overt act directed towards that particular conspiracy must be committed in the Southern District of New York. In effect there were four conspiracies rolled into one. The jury may find that there is one, but yet, as to the one they feel --

THE COURT: I would think that you would mount confusion on confusion by asking me to add to what I think is otherwise a very clear statement of the multiple conspiracy situation as announced by the Court of Appeals in a case that was tried by Judge Duffy. I assume you are familiar with the case I am talking about.

MR. GOLDMAN: Tramonti?

THE COURT: Yes.

MR. GOLDMAN: The problem here is that there are certain problems for some defendants who never left Nevada or Texas, or whatever, and although I realize there is confusion, I think that is caused by the inclusion of one --

THE COURT: That would breed confusion rather

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than clear anything.

Is there anything else?

MR. GOLDMAN: I go along with that.

I would except to the Pinkerton charge in view of the fact that it is over the broad scale conspiracy charged in the first count.

THE COURT: Mr. Richman?

MR. RICHMAN: The defendant Titlow has no objections or exceptions to your Honor's charge.

THE COURT: Mr. Ehrlich?

MR. EHRLICH: Your Honor, the defendant Mullenax respectfully excepts to your Honor's charge with respect to the Pinkerton theory, that charge regarding conspirator's alleged responsibility of substantive offenses on the ground it violates the double jeopardy provisions of the Fifth Amendment.

Secondly, we respectfully except to your Honor's charge with respect to aiding and abetting inasmuch as the indictment does not charge or cite 18 United States Code, Section 2.

Thirdly, your Honor, with respect to the example used by the Court with regard to inferences, and inasmuch as the Court charged that a conspiracy is usually a matter of inference, the defendant Mullenax

would respectfully request that your Honor charge the third paragraph in the supplemental requests to charge submitted by the defendant Mullenax.

THE COURT: Do you want me to charge on reasonable certainty?

MR. EHRLICH: The inferences must be consistent with one another.

THE COURT: Now you are modifying the request. Your request is wrong.

Do you want to give me a modified request or do you want me to do this impromptu? I don't propose to do any improptu acting on this matter. Do you want to correct this third paragraph? You may go ahead and do that and I will come back to you.

MR. EHRLICH: Thank you, your Honor.

Fourthly, your Honor, we except to the portion of the charge --

THE COURT: I am clear with you, am I not, that you are not requesting me to charge the language in reasonable certainty?

MR. EHRLICH: I would, your Honor.

THE COURT: You want that?

MR. EHRLICH: Yes.

THE COURT: I will not charge in the form

requested. I don't feel that I have to at this time prune out language for you.

Go ahead.

MR. EHRLICH: Thank you.

Fourthly, we would except to that portion of your Honor's charge that to pledge Select stock as a loan or as additional security is an offer of sale within the provisions of the security laws on the grounds related to the circumstances in this case and submitted in pretrial motions, and I refer to Mr. Segal's case, the McClure case.

Lastly, we would request that your Honor charge the two-inference rule.

Thank you.

THE COURT: I take it you don't desire to reframe any of your requests?

MR. EHRLICH: No, your Honor.

THE COURT: Mr. Lesser?

MR. LESSER: No objections and no exceptions.

THE COURT: Mr. Rhodes?

MR. RHODES: Your Honor, there is one point I may not have written down correctly, where the Court charged the jury relative to the reputation testimony. I wrote down: You may considered that the defendant did

not reveal to people his criminal conduct.

THE COURT: I didn't say that.

MR. RHODES: At any rate I point that out.

Other than that I have no objections or exceptions.

THE COURT: Mr. Berger?

MR. BERGER: Your Honor, in regard to the charge I object to the fact that there was an inference raised in the instruction that the crime of conspiracy is either worse or more dangerous than the substantive crime. I somehow got that inference from the instruction. I was not copying it down verbatim, but I did get that inference. I feel that that is objectionable.

In addition to that, I believe that we would be entitled to instruction on the words "as of," as a legal matter, as I requested in my instructions. "As of a certain date," is a question of law and the jury should have been given some instruction with regard to that.

In addition to that I would quickly request that if possible some instruction be given with regard to the grandfather clause exemption which I too omitted to include. I feel in the interests of justice it should be put in.

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THE COURT: You had weeks and weeks and weeks; you had sufficient notice of the time when requests to charge were to be furnished, and there was not a single grandfather clause request by any defendant.

Is that everything on your part?

MR. BERGER: Lastly, simply the general objection that the requests to charge submitted by the defendant Rappaport were not given.

THE COURT: You can't throw in a blanket dragnet. Anything you have to say must be specifically called to my attention at this time, exactly what you consider you are entitled to, so I may have the opportunity before the jury goes out to consider what you are saying. If you are laying down some dragnet for appeal, this is the wrong time.

MR. BERGER: Specifically the two-inference instruction.

THE COURT: I have already announced on prior occasions that the two-inference rule is not the rule in this circuit.

Mr. Dulsky?

MR. DULSKY: I have one request, sir, and that is with respect to the matter of circumstantial evidence. I respectfully request that your Honor charge that the jury may not draw an inference from an inference; that the

inference may be drawn but it must be drawn logically and must flow from direct evidence -- not from another inference.

THE COURT: The charge on that score, I believe, is clear and adequate. I decline to charge the language suggested.

MR. DULSKY: I have no further requests, your Honor.

THE COURT: Mr. Concannon?

MR. CONCANNON: Nothing beyond Mr. Segal's objection, your Honor, which I join in, and beyond the requests of the defendant Vanasco to indicate to the jury the limited purposes of the evidentiary admissions concerning Karen & Company.

THE COURT: Mr. Rooney?

MR. ROONEY: We have nothing, your Honor.

THE COURT: Mr. Broderick?

MR. BRODERICK: Your Honor, I have no requests to charge, but I am concerned about the indictment situation. You mentioned in your charge you would be handing the indictment to the jury. Will you be handing both indictments to the jury?

THE COURT: What I will do is this: There is one single indictment now.

MR. BROKERICK: I was not aware of that.

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THE COURT: Since the body of both indictments was identical and there was only a difference in the number, the page number of the criminal docket is left off and Mr. Gardner's name is added to the list of those in the indictment; so only one single paper goes to the jury.

MR. BRODERICK: A consolidated indictment? It was just added --

THE COURT: That's not the way. There were two separate indictments, one naming Mr. Gardner alone and one naming sixteen defendants. I have now consolidated them into one action.

MR. BERGER: May it please the Court, I forgot one thing.

When the indictment goes in Mr. Rappaport's name will be deleted from counts 52 and 53?

THE COURT: You sent me a note during the course of the charge. I denied your motion to dismiss. I considered your application on reargument and denied the reargument.

MR. BERGER: That was the government's motion to reargue. My motion was granted by the Court and thereafter the government --

THE COURT: I did not dismiss any count as to any defendant at any time.

MR. BERGER: I don't know if a record was taken

on it. My opinion is that you originally dismissed counts 52 and 53. You gave the government an opportunity to reargue, and then you went ahead and said, "Reargument denied."

THE COURT: Mr. Berger, you are engaging in wishful thinking. I stated I denied the motion to dismiss and I would consider that tomorrow; that you handed that up as an application for reargument and I announced my decision, and that's the way it was and is.

MR. BRODERICK: Concerning the deliberation of the jury, the marshals -- this relates only to me because Mr. Gardner is presently incarcerated. The marshal is directed to close the door and everything else. I do not think there was any problem concerning the jury here, but I would say that if we could, I would like to have marshals that have not been in the courtroom that constantly guard the jury. I would not like to have that inference drawn here.

THE COURT: Is there anything else? I see you are back, Mr. Segal. Have you decided on anything? Is there anything you want to hand up? I don't want any oral conversation. This is a time when lawyers take the opportunity to try and get the judge into some kind of impromptu determination that has not been considered.

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I worked on this charge for a week. I don't propose now, in a few minutes, to come to any decisions on matters that have not heretofore been submitted.

MR. SEGAL: Your Honor, my problem is that I have really tried to be right down the middle on this, without leaning one way or the other. I am just going to read to you what --

THE COURT: Hand it up to me. Don't read it to me.

MR. SEGAL: I will hand up two items, your Honor.

If I may approach the bench I may be able to explain the second one.

THE COURT: Let me read it first.

(Pause)

THE COURT: Show it to the government.

(Pause)

THE COURT: Let me ask you this: We are talking about stock issued before the '33 Act. I don't believe that you can really mean that. Do you mean to say that Select stock was issued before the '33 Act? Select stock was the one that we are talking about.

MR. SEGAL: That's right, except we were getting into the Goldfield stock.

THE COURT: Throughout the charge I talked only

about Select. As a matter of fact, I think I mentioned Select right at the opening. I never mentioned anything at all about Goldfield and didn't intend to. I don't see how you can get the grandfather clause into this affair because Select was certainly a 1970 item and not a 1933 and earlier item. I think it is just an error on your part.

My recollection is that right at the start of the charge on conspiracy and also again at another portion of the charge -- the entire context of the charge relates solely to Select. Here it is (indicating). Look here. I charged that the indictment charges that the object of the conspiracy was to obtain control of a Shell Corporation, Select Enterprises, Inc.

I did not mention Goldfield, but I mentioned Select right at the start of the conspiracy charge.

That's why I am puzzled by any belated reference to a grandfather clause.

MR. SEGAL: The Goldfield stock was issued in 1915. That stock was what Segal put into the box with Boyd. The Select stock was transfered out of Goldfield, that 100 shares of Select. It was transfered out of Goldfield in 1970.

THE COURT: The securities violations related to Select Enterprises stock and that's the only charge that

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has been given.

MR. SEGAL: That charge I handed you doesn't help me.

THE COURT: Neither does it pertain to the case.

How about the first request? What about that?

MR. MAC DONALD: We oppose it, your Honor. We don't believe that states the law. We cited in our originally proposed charge a decision which supports the charges drafted by the government. A pledge is a sale within the meaning of the Act, and although I must confess, because I didn't have that case called to our attention, I have not read it, but if that's the law of the Fifth Circuit, that's not the law here.

MR. SEGAL: They do distinguish other cases.

MR. MAC DONALD: It is obviously private litigation, and it is not a United States versus somebody else, and without the facts and circumstances of it before us it is difficult --

THE COURT: Let me say this: I decline to charge in the language of a supplemental request, number one, because the matter is submitted untimely; secondly, because on inspection of the item it raises questions of law that cannot be solved on horseback here.

There was no similar request relating to the

subject matter heretofore submitted to me.

MR. SEGAL: For the Court's edification --

THE COURT: I would like to mark this request that you have submitted as a supplemental request as Court Exhibit 50-A so that it goes with your requests.

(Court Exhibit 50-A marked.)

MR. SEGAL: The McClure case is 492 Fed. 2d 490. The Court may take a look at that after the jury goes out. It is there.

THE COURT: Let me just go down the various items.

Mr. Concannon, what was this that you put forth about the limited purposes of the admission regarding Karen & Company?

MR. CONCANNON: I submitted just that one request. I asked the Court --

THE COURT: If it is in the requests, let me look at it.

(Pause)

THE COURT: I decline to charge in the language charged in Court Exhibit 48 for identification, which was the Vanasco request to charge, except as already contained in the body of that charge.

I decline to charge as requested in the other respects except as already contained in that.

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Under those circumstances, I will recall the jury and advise them that I have no further additions to make to the charge.

MR. ROONEY: Are you going to discharge the alternates?

THE COURT: I am going to discharge them. Why?

MR. ROONEY: Maybe I misunderstood you. I thought they were going to deliberate as a group.

THE COURT: I told them not to deliberate until I recall them.

The Court declines to charge as requested in supplemental request number 2 by the defendant Boyd on two grounds: First, the stock involved in this case is the Select stock; secondly, the request to charge is incomprehensible.

(Jury in box)

THE COURT: I have no further additions to the charge. I will now ask the clerk to swear the marshal.

(Marshal sworn)

THE COURT: The alternates are excused with the special thanks of the Court for their faithful attendance and ability and willingness to serve. Fortunately, we are all in good health and all prepared; the jury is ready to deliberate. Please go to room 109 and pick up your

certificates of service. The clerk down there will give them to you.

(Alternates excused)

THE COURT: Now, Mr. Foreman, I have here twelve copies of the indictment and twelve copies of a verdict form and the original of the indictment. The jury may wish to use these to make its notations.

Bear in mind what I said about each count to be separately considered as to each defendant, and the evidence in connection with that count separately considered as to each defendant. This has been set up for the convenience of the jurors in following the names. I have put them in alphabetical order for convenience in finding their names, whereas you will find in th indictment they are in a different and not alphabetized order. There is no significance in that. This is just a setup, the verdict form, for convenience. The marshal will give those to you, and also paper and pencil.

You may now go to deliberate.

(Time noted: 11:20 a.m.; the jury left the courtroom to begin its deliberations.)

THE COURT: Gentlemen, some modus operandi has to be developed in connection with the exhibits. I hope it does not occur, but if there is any call for

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redacted exhibits there will be a problem of making sure that the redaction has been made before the papers are sent in.

As to the other exhibits that are in evidence, it will be my suggestion that you eliminate from your piles of original exhibits those that have been marked only for identification and are not in evidence, if there are any, and put them aside in a separate file drawer, perhaps, so that we don't, inadvertently, get an exhibit before the jury that has not been in evidence.

The clerk has a list of all of those that have been marked only for identification and you are to check with him now and prepare a list of those to avoid error later.

So far as standing by, I think that for the first half hour, against the possibility that some thought may strike somebody about some exhibit that he or she may want, I would suggest everybody remain conveniently near to the courtroom. Then, after that, we will let the jury deliberate until the usual time and arrange with the marshal to see to it that they go out to lunch at about a quarter to one. At that time they can probably get into the restaurant at one o'clock and, hopefully, back at two.

Counsel can guide themselves accordingly, that

they will be sent out at about that time. There won't be any necessity for attendance in the courtroom room.

Beyond that, if there are any lawyers who have any special problems that will have to be attended to and they desire, with the consent of their client, and the client of a cooperating lawyer, to have somebody cooperate and stand in for the lawyer who has to unavoidably leave, that would be satisfactory as far as I am concerned.

However, the person who is your designee will have to have full authority to deal with any jury requests or matters that arise during your absence.

We are generally on duty until the jury comes in. We will decide what is to be done as the day wears on.

Supplemental request number 2 by Mr. Segal will be marked as Court Exhibit 50-B.

(Court Exhibit 50-B marked.)

THE COURT: All the requests that have heretofore been handed in have been marked as court exhibits and were turned over to the clerk.

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(Note received from the jury at 12:20 p.m., marked Court Exhibit 55.)

(In the courtroom, 12:30 p.m.; jury not present.)

THE COURT: I have a note from the jury which says, "Could we have Sections 1001, 1341 and 1343 of Title 18, United States Code, and Sections 77-E, 77-Q and 77-X of Title 5 of the United States Code."

What they want is statutes that have been read in the course of my charge. Now, I have here the government's request number 8, which sets those statutes forth without comment and I think that that probably can satisfy the request, so I will hand you a copy so that you can examine it and then we will compare it with the requests to see whether we have all of them.

Where did the Sections 77-E and 77-Q come from?

MR. SUSSMAN: Perhaps from the indictment, your Honor.

THE COURT: Yes, but are they reflected in the charge?

MR. SUSSMAN: Yes. Section 77-E is Section 5 and 77-Q is Section 17.

MR. CONCANNON: Your Honor, would it be your intention to give copies to them or to read it to them?

THE COURT: No. They want a copy of that and I

jbs-1

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THE COURT: To the submission of what?

MR. EHRLICH: Of those.

THE COURT: Of the statutes requested?

MR. EHRLICH: Yes.

THE COURT: You realize that they are in haec verba exactly what I read to the jury in the course of my charge?

MR. EHRLICH: Yes.

THE COURT: And you object to it?

MR. EHRLICH: Yes, and I would like to state that the statutes as they are contained do not cover elements of knowledge, intent and wilfulness. Now, when the jury receives the statutes, they may erroneously rely that all the elements of the offense are contained in the statute and I believe that it must be put in the context of the Court's charge.

THE COURT: Is there any objection from any other counsel?

MR. SEGAL: Your Honor, I would prefer if the Court would read to the jury, rather than having the jury use those statutes. I am afraid of their use of the statutes as quasi lawyers and I just wonder whether or not the Court could not just reiterate its charge to them in regard to the statutes.

THE COURT: Well, it is perfectly apparent to me

that in reading the indictment, the jury has found these references and what they want are the extensions of the references. Now, is there any reason why the jury should not have both the verbal and the written form? The remark that Mr. Ehrlich makes is completely out of order in my judgment.

MR. SEGAL: Your Honor, I don't have 18 with me and I just wonder, the sections which indicate that there have been redactions, do they eliminate any items which would be relevant to the --

THE COURT: Wait a minute. What sections which indicate redactions? This is the way I read them to the jury.

MR. SEGAL: There are dots indicating that something is left out.

THE COURT: Yes. There is nothing in the redacted portions which bear on this. I will give you an example here. I have Title 18 here.

Show Mr. Segal the Title 18 request. Let him see these three requests.

(Pause.)

MR. SEGAL: I don't have any problem, your Honor, with what is omitted from the 1341.

THE COURT: The omissions are unnecessary words for the statute, isn't that right?

MR. SEGAL: Yes.

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THE COURT: I will accordingly transmit to the jury, in response to its request, these items, which are now deemed marked Court's Exhibit 55(a).

Mr. Berger, at a quarter of one on October 17, 1975, during the course of the deliberations of the jury, I received Court's Exhibit 56 from Mr. Berger, stating that the Defendant Rappaport respectfully requests a mistrial as his decision not to put in an affirmative case and the closing argument were both predicated upon the belief that the Court had dismissed as to Mr. Rappaport Counts 52 and 53 of the indictment.

I think that the motion is absurd, particularly with reference to the three places in the record that Mr. Berger himself called to my attention, namely, the denial of a dismissal of Counts 52 and 53 at stenographer's minutes, page 1731, the repetition of that denial at pages 1756 and 1757 and the repetition of the denial again at page 1920.

These notes are marked Court's Exhibit 56. The motion is denied. At no time was there even a scintilla of a suggestion of a grant of the motion.

AFTERNOON SESSION

(Time noted: 2:35 p.m.)

THE COURT: I am going to send this note in with the exhibits. It reads as follows:

Jurors: The SEC testimony is in volumes that would have to be edited. If any part of that is desired it will have to be read to you. Consequently, those exhibits are not now included in response to your request.

I take it, gentlemen, there is no objection to that note; is that correct?

MR. GOLDMAN: The only thing --

THE COURT: Don't say "the only thing." If there is an objection, that's what I want to hear.

MR. GOLDMAN: There is an objection.

I think you might broaden that to include the Peterson depositions which the government said they were not going to offer at all other than what they had --

THE COURT: You mean the SEC testimony and the depositions?

MR. GOLDMAN: And the depositions.

THE COURT: I will write this: And the depositions are in volumes that would have to be edited. If any part of that is desired it will have to be read to you. Consequently, those exhibits are not now included in response

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to your request.

Is that satisfactory to everybody?

(Pause)

THE COURT: There being no objection, that will be given to the marshal together with the exhibits.

The note from the jury is marked as Court Exhibit 57. This note reads as follows: Please send government exhibits.

The note is signed by the foreman.

(Court Exhibit 57 marked.)

(Time noted: 2:40 p.m.)

EXHIBIT INDEX

Court	Identification	In Evidence
50-A		2576
50-B		2580
55		2581
56		2587

UNITED STATES OF AMERICA

vs.

75 CRIM. 140
75 CRIM. 346

JOE TRUMAN BOYD,

Defendant.

Before: HON. MILTON POLLACK,
District Judge
and a Jury

BALANCE OF TRANSCRIPT:

October 17,18,20, 1975

which reads: In regard to the defendant Bissett, his opinion letter, Exhibit 6, does not mention Select. Is there any other exhibit that we could check into in regard to that?

In response to that I propose to direct the jury's attention to Exhibits 6, 6-E, 328, 329, 330, 331, 332, 333, 335, 336, 340, 356, and 375, all of which are in evidence according to the notes of the clerk.

MR. MAC DONALD: There is only one other represented by Mrs. Grube's record, Government Exhibit 389.

THE COURT: Pass it up here.

MR. SUSSMAN: I don't think there is a copy of it. It is already in the jury room.

THE COURT: I will endorse the exhibit numbers on the note and return it to the jury.

MR. ROONEY: I object. I don't think we should direct the jury's attention to any particular exhibits. The jury has all the exhibits in the case. I don't think we should be specific. At most we should only say the charge in the indictment refers to Government Exhibits 6, 6-C, the opinion letter, and the certificate of revival.

THE COURT: The objection is noted.

MR. SUSSMAN: Your Honor, there is one further exhibit we think might be helpful to the jury in this

(At 4:30 p.m. the following proceedings took place:)

THE COURT: I have a note from the jury which reads: Can you please give us the numbers to Bissett's opinion letter.

Would somebody enlighten me on that?

MR. MAC DONALD: 6.

THE COURT: Is that convenient?

MR. MAC DONALD: It is Government Exhibit 6, your Honor, and it is in the jury room.

THE COURT: They only want the number.

MR. MAC DONALD: 6.

MR. RHODES: Just one?

MR. MAC DONALD: Yes.

THE COURT: I will endorse this note and give it to the marshal to return to the foreman with my answer: Goverment Exhibit 6, signed, Judge Pollack.

Is that satisfactory?

MR. ROONEY: Yes, your Honor.

(At 5:15 p.m. the following proceedings took place:)

THE COURT: Off the record.

(Discussion off the record)

THE COURT: Gentlemen, I have a note from the jury

regard, and that is Exhibit 43 in evidence, a copy of which I will hand up.

THE COURT: Yes. I shall include Exhibit 43 also.

MR. ROONEY: May I see that, please?

(Pause)

MR. ROONEY: Exhibit 43 doesn't mention Bissett. It is the certificate.

THE COURT: I will take note of that objection.

MR. ROONEY: The Court is rejecting my objection?

THE COURT: The objection is overruled, yes.

The reporter will make an exact record of the note being returned to the jury.

(The note to be returned to the jury read as follows:

Exhibits 6, 6-C, 43, 328, 329, 330, 331, 332, 333, 335, 336, 340, 356, 375, and 389, signed Judge Pollack.)

MR. SUSSMAN: May I inquire if that note includes, as I think it does, Exhibit 331?

THE COURT: Yes.

MR. SUSSMAN: Thank you, your Honor.

THE COURT: I take it that all of these exhibits are in the jury room. If not I suppose when I look for

them they will probably send out for them.

MR. SUSSMAN: I believe they are all in there.

THE COURT: I will ask the clerk to give this to the marshal.

(At 5:25 p.m. the following proceedings took place:)

MR. BERGER: May it please the Court, your Honor, I issued a subpoena duces tecum --

THE COURT: You did?

MR. BERGER: Yes, your Honor.

THE COURT: Do you know the requirements for the issuance of a subpoena duces tecum in the federal courts?

MR. BERGER: During the course of the trial I believe that the attorney can issue it without prior permission of the Court. That's my understanding.

THE COURT: I would just like to remind you of an altercation I had with Chief Judge Sugarman in 1940 who called my attention to the fact that a subpoena duces tecum is issued by the clerk of the court and that it is a contempt for a lawyer to do so. However, I will excuse your omission.

MR. BERGER: Thank you, your Honor.

In any event, I listed in the subpoena duces tecum,

I asked for, the original tapes on the transcript, the official transcript, pages 1728, 1739, 1730, 1731, 1756, 1757, and 1920. I have done that so that those tapes or that tape would be made part of the court record for the purpose of preserving the tape to make sure it does not get lost or destroyed on the eight floor in 803. I would like it marked as a court exhibit and kept in the court file.

THE COURT: We will take the extra precaution of having those tapes Xeroxed and several copies and the originals will be marked as court exhibits to be filed in locked custody.

MR. BERGER: Thank you, your Honor.

THE COURT: If you have the slightest doubt, even the slightest, that these reporters gave a full, correct, and absolutely accurate transcript, I suggest that what you do is ask them to read you the tapes while you read the transcripts. I have the utmost confidence that they faithfully performed their official duties as they are required to do..

MR. BERGER: Before they Xerox it I would appreciate it if they would read it to me.

THE COURT: I think there is enough said.

I will ask the reporter to read it to you.

I am sure that they filed an honest transcript.

MR. BERGER: I believe it is honest. I believe it may be inaccurate.

THE COURT: If you are trying to tell me where I said denied I said granted, it would be a dishonest transcript because I said denied once, twice, and three times out loud in your hearing.

(At 5:45 p.m. the following proceedings took place:)

THE COURT: I have the following note from the jury: Could you give us the exhibit numbers on Vanasco, also Schleger.

Would you please start looking those up so that we can respond.

MR. DULSKY: Your Honor --

THE COURT: Wait. Mr. MacDonald is not here. I have just given you a little preview so that you can begin to work up the preparation.

(Pause)

MR. CONCANNON: Your Honor, amongst the exhibits that they already have concerning Vanasco, or rather not included in those, is the only one which Vanasco introduced, and I would like to have that sent in.

MR. MAC DONALD: We have ananswer on

Mr. Vanasco, your Honor.

THE COURT: Have you agreed upon an answer?

MR. CONCANNON: I think so, your Honor.

THE COURT: What is the answer? What is it that counsel and government have agreed on with respect to Vanasco?

MR. MAC DONALD: Government Exhibits 26-A, 210, 211, 234, 254, and 353.

MR. CONCANNON: Your Honor, in addition, Vanasco's Exhibit A, which they do not have at this time.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

I will send into the jury room this list merely headed Vanasco: 1-C, 1-H, 7-A, 7-G, 8-A, 26-A, 210, 211, 236, 244, 353, and Vanasco Exhibit A.

MR. CONCANNON: Thank you, your Honor.

THE COURT: Off the record.

(Discussion off the record.)

THE CCURT: On the record.

MR. MAC DONALD: While Mr. Schleger and Mr. Sussman are working, I am reminded that the Grube contracts with respect to which there was a stipulation that they came off the Bissett typewriter, they were not

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called to the jury's attention in resonse to their Bissett inquiry twenty minutes ago.

THE COURT: No mistakes are rectified at this time.

MR. RHODES: The defendant Barnett objects, your Honor, to the marshaling of material for the purpose of sending it into the jury room as it might affect any one defendant or any other defendant inasmuch as it amounts to a comment on the weight of the evidence and/or it may mislead the jury to indicate some exhibit has some bearing upon some other defendant when, in truth and in fact, it may not.

I further object on the basis that the sending of specific items into the jury and pointing them out because it has the effect of the jury receiving Court-directed information or Court-directed attention to the information, and, as such, the Court-directed attention might cause the jury to feel that it should give more credence to the Court-directed matters than otherwise it would.

THE COURT: Is that everything?

MR. RHODES: I wish I had more, but that's all. Do you overrule my objection?

THE COURT: I just asked the clerk to send it in.

That's the answer to your objection.

MR. SEGAL: I would second that motion and --

THE COURT: The motion is deemed made by everybody and denied for everybody.

MR. RICHMAN: Your Honor, may I note an objection for the record and ask if this procedure of sending in isolated exhibits as it refers to each and every defendant becomes highly prejudicial in that it makes the Court an adjunct of the triers of the facts.

THE COURT: In the event that you decide that you want me to have the jury in to read to them the list of exhibits, I will do that.

MR. RICHMAN: I would prefer that, your Honor.

THE COURT: This is the first time you have said that, and if you want to face the jury at the next request, we will have the jury come in and let you face them and they face you.

MR. SEGAL: Your Honor, I don't join in any request to have that jury come in. I would be opposed to that. I object to the procedure as we have had it on the record. I am perfectly content once the Court has ruled that it go in as the Court has been doing.

THE COURT: It looks to me like the rival camps want the best of both worlds.

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(Court Exhibit 58 marked.)

MR. MAC DONALD: Preserving an objection to Mr. Schleger, 1-D, 7-G, and 160 as redacted.

MR. DULSKY: With respect to Exhibit 160, that, of course, is the SEC deposition, and we have an agreement as between the government and the defendant Schleger with respect to a redacted version.

Mr. Sussman and I have just done it and I have no objection to that. I do respectfully object to sending this Exhibit 1-D, which is, of course, dependent upon testimony. That is a copy of the Select balance sheet, I think, of January 1970. It was referred to in the testimony of the defendant Anfang.

With respect to 7-G, that is apparently the S-1 of Diamond Bros. The SEC deposition of the defendant Schleger refers to the S-1 of Diamond Bros. There is no other testimonial connection with respect to that.

I join in the objections made by other counsel with respect to singling out of items with respect to the jury and, in effect, giving them further summation.

THE COURT: I am not sure that was your objection.

It seems to me that in this instance the only exhibit to go to the jury on Schleger is 160 as redacted.

MR. MAC DONALD: The defendant Anfang testified that 1-D was the amount that he testified falsely about pursuant to his agreement with defendant Schleger.

THE COURT: That was not an exhibit on Schleger.

MR. MAC DONALD: Yes, your Honor.

THE COURT: I am sticking directly to the question asked despite the importunities of either side.

MR. DULSKY: Thank you, your Honor.

THE COURT: This reads: Schleger Exhibit 160, transcript attached.

We are favored with another note from the jury.

(Court Exhibit 59 marked.)

THE COURT: This note reads: According to the law, was it Titlow's responsibility to register the Select stock as in Roman numeral III-A of the sheets given to us?

It seems to me the answer is no to this question, that Titlow is not responsible for registering the Select stock. I don't think you disagree with that.

MR. RICHMAN: Not at all, your Honor.

THE COURT: Are you still pressing to have the jury come in here and face you?

MR. RICHMAN: I retract that as to that particular question.

THE COURT: I will answer this note, with the permission of Mr. Richman, and over the objection of the government --

MR. MAC DONALD: Surely, your Honor, if the jury found the defendant Titlow intended by his agreement to aid Boyd in distributing that stock, he had an obligation to cause a registration statement to be filed.

THE COURT: His obligation to file a registration statement would be applicable if he was an underwriter, broker, dealer, or a more than 10 percent --

MR. SUSSMAN: He owned 100 percent of the stock.

THE COURT: He was under an obligation to register only if he was engaged in the distribution, and I don't think that is the evidence. The evidence is something else. The evidence is that, or the contention is that, he was a conduit to the activities of others and cooperated with others in conspiracy.

I think that the precise answer is the word "No." I think that's the way I am going to handle it.

MR. SEGAL: I object to the answer. I believe it implicit that registration was required of the stock.

THE COURT: It implies that registration was required?

MR. SEGAL: Yes.

THE COURT: Wouldn't you say it was not required?

MR. SEGAL: I think under the circumstances here you cannot instruct the jury --

THE COURT: Perhaps the right thing for me to do would be to instruct the jury on the subject of registration at length. Maybe that's what I will do under the circumstances after I answer this. The contention of the government, which the jury could reasonably find beyond a reasonable doubt, is that a distribution, a public distribution, was in process and no registration statement was on file, and that that would be unlawful conduct under Section 5 of the Securities Act. I think the charge already says something on the subject of Section 5, and if it is the desire of counsel for the defendants that I reread the charge on Section 5 at this point, I will do so.

MR. RICHMAN: I object to a second charge to the jury and I respectfully ask --

THE COURT: Wait a minute. I am not asking you whether you object to a second charge. I am asking you whether you desire to have it reread. The word is "desire."

MR. RICHMAN: I am not the one that requested that.

THE COURT: Is anybody requesting it?

MR. RICHMAN: I certainly object to it. I have no desire to --

THE COURT: Has anybody requested it?

MR. RICHMAN: Mr. Segal raised the question. I didn't.

THE COURT: I am not sure he has yet requested it. We have had a discussion here and he has been thinking.

MR. SEGAL: And I have concluded, your Honor, that the answer is no.

MR. RICHMAN: The answer is no, your Honor.

THE COURT: Let me have the note and I will write the word "No" on it.

(At 7:00 p.m. the following proceedings took place:)

THE COURT: I previously canvassed the opinions of all counsel in the matter on the subject of whether we should excuse the jury from further deliberation at or about 7:00 p.m. this Friday evening until Monday morning when they resume deliberations. As I understand it, all counsel, on both sides, are in accord with that procedure.

I want to have a clear record on the subject and I will accordingly make a role call of counsel. The question is: Shall the Court at this time excuse the

jury from further deliberations until Monday morning?

You may answer either in the affirmative or in the negative.

Following that question I would also suggest that the jury be advised that if they wish to, but they don't have to do so, they may, if they have arrived unanimously at a verdict as to any count or counts with respect to any defendant or defendants, report that verdict or verdicts to the Court at this time. Thus a partial verdict may be made a matter of record before they leave, and I will ask whether counsel agree with that.

The first question, therefore, is this: Do you wish to have the Court excuse the jury from further deliberations until Monday morning, October 20?

Mr. Segal?

MR. SEGAL: Your Honor, I have no objection to that procedure.

THE COURT: You consent to it?

MR. SEGAL: I consent to it.

Do you want an answer to the second question?

THE COURT: Let's get the first question clear so we know whether we are going home.

Mr. Stokamer?

MR. STOKAMER: Yes, your Honor. I consent.

MR. GOLDMAN: I consent, your Honor.

MR. RICHMAN: I consent, your Honor.

MR. EHRLICH: I consent, your Honor.

MR. LESSER: I consent, your Honor.

MR. RHODES: I consent, your Honor.

MR. BERGER: I consent, your Honor.

MR. DULSKY: I consent, your Honor.

MR. CONCANNON: I consent, your Honor.

MR. ROONEY: I consent, your Honor.

MR. BRODERICK: I consent, your Honor.

MR. MAC DONALD: I consent, your Honor.

THE COURT: The second question is whether to take a partial verdict if there is a verdict on which the jury has unanimously agreed as to any count with respect to any defendant.

What is your view on that, Mr. Segal?

MR. SEGAL: I would oppose that, your Honor. I object to that procedure.

MR. STOKAMER: I oppose that.

MR. GOLDMAN: I have no objection.

MR. RICHMAN: I object to it.

MR. EHRLICH: I consent to it.

MR. LESSER: I consent to it.

MR. RHODES: I consent to it.

MR. BERGER: I consent, your Honor.

MR. DULSKY: I consent.

MR. CONCANNON: I consent, your Honor.

MR. ROONEY: I consent, your Honor.

MR. BRODERICK: I oppose, your Honor.

THE COURT: Mr. MacDonald?

MR. MAC DONALD: We consent, your Honor.

THE COURT: Of course the question really is not for counsel's determination. It is always appropriate for the Court to receive a partial verdict from a jury if they report that they have unanimously agreed as to any count with respect to any defendant. What troubles me is this -- I will state it to you very quickly:

There is a certain risk in the infirmities of living in New York in separating a jury until two days or three days hence. The failure to take a partial verdict when one is available risks all on the jurors being available at the return time. That risk can be minimized by sequestering the jury over the weekend. That seems to be the alternative that those who oppose are suggesting that the Court should follow.

I will canvass the situation with the marshals about sequestering the jury.

MR. STOKAMER: Your Honor, if that is the choice, I will withdraw --

THE COURT: I didn't say there was a choice. I just said that it is incumbent upon the Court to see to it that a trial of three weeks be not frustrated by some misfortune that may befall a juror.

MR. STOKAMER: In view of your Honor's remarks, I would be opposed to sequestering and in the light of your Honor's remarks I would change my vote, if that would change your Honor's mine.

THE COURT: That still leaves some who think that it is better not to inquire. Of course the jury may not desire to report a partial verdict even if it has unanimously arrived at a partial verdict and there is nothing I would do to compel them to do so. The alternative is always open.

It would be a travesty on justice, I think, for each side of this case, if the case had to be retried because of a misfortune to a juror over the weekend. Your alternates have already been excused.

We will find out from the marshal what the situation is in respect of sequestering, and maybe the best thing to do is to excuse the jury overnight and continue tomorrow morning, and not risk the three-day lapse.

I think that's probably what the solution should be, because it is a painful thought to lock up the jury over a weekend, if that is necessary.

Accordingly, I think that I will excuse the jury from further deliberations this evening and have them come in tomorrow morning at nine o'clock.

The clerk may bring the jury in.

(Jury in box.)

THE COURT: I have a note from you, ladies and gentlemen, signed by your foreman, which reads: Do we have to reach a verdict on each individual count in respect to each defendant, or do we group the counts together as on our verdict sheets?

With respect to the counts that you have to consider, the answer is that you have to reach a verdict on each individual count in respect to each defendant. If the result of that happens to coincide with the grouping, then you can use the verdict form. If it doesn't you will write down the counts on which you do reach unanimity on the issue of guilt or absence of guilt.

The jury came to court this morning before nine o'clock so that we could start deliberations at nine o'clock. It is now somewhat past seven o'clock at night. That is a long day. In the interest of your well-being and

the clarity of your thinking, since you have not reported a verdict or verdicts as of this time, I am going to now suggest that you terminate for this evening your deliberations and to return here to court tomorrow morning at nine o'clock -- if that is convenient -- or 9:30 if it is inconvenient for anybody. You can indicate that merely by raising your hand.

Is there anybody who would prefer 9:30?

All right, we will meet at 9:30 tomorrow morning to continue your deliberations.

This case has been a rather lengthy one and I would not want to have anything occur which might, in the slightest, mar the integrity of the process or the propriety of the procedures. In excusing you this evening I want to say to you that you should not deliberate any further individually or consider this case in any way, or discuss it with anyone in any place, either here or in the subway or at home. You are not to turn your attention back to this case until you have arrived here tomorrow and are all present and accounted for. Then, in the jury room, you will resume your deliberations.

I shall expect that no one directly, indirectly, proximately, or remotely, would have anything to say, or to greet you socially or any other way, or to have any

mention on your part; you are on a jury that is still deliberating or discussing. You are sworn to the highest fidelity in that regard. Should anyone in the slightest approach you, you are obligated to call that to the attention of the clerk of the court who will promptly call it to my attention for any consideration that may be appropriate.

I would like to have you all get the rest that you deserve. You have been in session for well over ten hours today. While the session tomorrow is a burden, it is a burden of citizenship. Allowing this case to go over onto Monday results in the taking of undue risks, unfortunate occurrences, which are minimized by going forward again tomorrow. It is inconvenient, but it is safer, and it is best that the work that you have undertaken be carried through without risk or frustration or failure, due to any misfortune or accident.

It is regretable that you do have to come in on the day when you formerly may wish to rest, on Saturday. I think you, on thinking it over, realize that I am doing it in the best interests of the administratin of justice.

I will, therefore, ask you to leave all your exhibits which will be locked up in the jury room by the marshals and available to you again tomorrow morning when

you return to resume your deliberations. Since we are privileged to continue in this suite of rooms, at least until Sunday night, because on Monday a different case comes in here, we have to go to a different room, you will return to the same jury room as you have been using this last few weeks.

I bid you good night and good rest.

(Jury excused)

THE COURT: The note that we had from the jury which I responded to, is to be marked as Court Exhibit 60.

(Court Exhibit 60 marked.)

THE COURT: I would like to give the jury the opportunity to leave the building. I will, therefore, request that you give them a five-minute opportunity to clear out before you leave the courtroom. I need not remind the lawyers who, as officers of the court, know exactly what I have in mind. The laymen among you may not realize that many times an appearance can be misunderstood for something that it is actually in fact not, and I don't want anyone to risk any appearances that might involve problems. So, if you will be good enough to remain for a few minutes until the jury has cleared the courthouse, we will be in recess until tomorrow morning at 9:30.

(Time noted: 7:20 p.m.)

UNITED STATES OF AMERICA

vs.

JOE TRUMAN BOYD, et al.

New York, October 18, 1975.

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(The jury resumed deliberations at 9.30 a.m.)

(Note received from the jury at 9.45 a.m.)

(Court Exhibit 61 marked.)

xx (In the courtroom - jury not present, 9.55 a.m.)

THE COURT: I have a note from the jury this morning which says:

"If some one defendant is guilty of one count or more, do we just check the box or do we list each count? Example, Counts 2 to 28 guilty, Count 2, Count 6, et cetera, or just check box."

It seems to me that I ought to just say to them, "Please make up your own verdict forms," and make no answer to this.

Isn't that the right thing to do?

MR. RICHMAN: That sounds good, your Honor.

MR. SEGAL: Yes, sir.

MR. MacDONALD: Yes.

THE COURT: Everybody agrees to that?

Then the answer will say, "Please make up your own verdict form."

Shall I add, "Which will be read in open court"?

I will make it "Which you will read in open court."

(Notes received from the jury at 11.05 a.m.)

(In the courtroom, jury not present, 11.30 a.m.)

THE COURT: I have two notes. The first is marked Court's Exhibit 62.

(Court Exhibit 62 marked.)

THE COURT: It reads:

"Could we have the exhibit numbers of Counts 2-28, 29-40 and 41-51."

Have we got a record of those exhibit numbers?

MR. MacDONALD: We do, your Honor.

THE COURT: The indictment lists letters and telegrams and so on.

Apparently you have prepared such a list previously.

MR. MacDONALD: Yes.

THE COURT: Circulate this among the defendants' counsel and see whether they agree to this.

There is a second note here, too.

MR. MacDONALD: The old material beyond the numbers and the telephone bills we direct our attention to a line of the phone bill.

THE COURT: In other words, it's an exhibit number?

MR. RHODES: I believe they have all the exhibits back in there.

THE COURT: What they want is somebody to tell them which ones to pull, which is perfectly legitimate, unless you want them there for two or three weeks.

Now, gentlemen, I think we have something that will take longer. I don't think we ought to waste a lot of time about the exhibits. That is just mechanical.

We have another question here:

"Can we please listen to Karfunkel's testimony in regard to Mr. Gardner."

Now, that is going to take some time, so let's not get lost on the identification of the exhibits.

MR. BRODERICK: Your Honor, with regard to the second note --

THE COURT: I am not up to the second note yet. I want to dispose of this first request.

MR. SEGAL: Your Honor, in connection with the

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first note, as to the items in the counts which the jury has requested, there is a consensus that the only document which should go in would be the document upon which the Government relied when it listed that charge. In effect, it would be either a confirmation or a letter or a document which would represent the mailing upon which the jurisdictional basis was founded, so we would request merely that that document go in.

We feel that the compilation as made by the Government here is in the nature of an editorializing of a position rather than a conforming to the request and if the Government could just cut these down, which would mean that they would remove two or three of the numbers in each of the counts, we would have it and it could be done probably very expeditiously. I think the feeling is --

THE COURT: The purpose is not to stultify the consideration of the case by the jury. It is to give them the opportunity of having the exhibits that the Government says pertain to particular counts for their consideration. That is not editorializing and if we just can't get agreement on that kind of thing, I am just going to rule on it because it seems to me that there is a degree of captiousness that is going on here that is extraordinary. Let me

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see the list.

MR. SEGAL: Our feeling is that the jury has made a specific inquiry as to what it is that they are referring to in the court and the Government couldn't possibly have been referring to more than an item, which is normally a confirmation or a letter.

THE COURT: You are telling me what the Government couldn't be doing. The Government is the one that ought to say what its contention is.

MR. SEGAL: But they are not asking for a contention.

THE COURT: They want the exhibit numbers that relate to these counts.

MR. SEGAL: And I think what they are talking about --

THE COURT: Why do you say you think? Have they communicated with you?

MR. SEGAL: No, nor with the Government.

THE COURT: I'll ask the jury when they come in here.

Let me see 205, 206, 263 and 353.

(Pause.)

THE COURT: I don't see why 353 should go in, Mr. MacDonald. That's a compilation of all the

exhibits. Really, that is a summary, isn't it?

MR. MacDONALD: Yes, sir.

THE COURT: All right.

205 is one leg of Count 2. 206 is the comparison for that and 263 shows who the customer was.

Look at these things, Mr. Segal, and see whether that isn't the exhibit. You can't have just one piece of paper.

MR. RHODES: Your Honor, I think this is what --

THE COURT: Please. Let's do this thing one at a time. Otherwise, everybody will be talking, nobody listening and everybody disagreeing.

You have a transaction dated February 10, 1970. You have two sides of the transaction. That means that you need two items or three, as they are. There happen to be three pieces of paper. The only thing that I see that is unnecessary is the compilation itself and that would make life easier for anybody reading it but, if you want the jury to sweat it out, we'll let them sweat it out.

MR. SEGAL: Your Honor, I have no problem with 205, none of us do.

206, the first page seems to be the operable exhibit --

THE COURT: But the whole exhibit is in

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evidence. What do you want me to do? Shall i begin to point arrows at something? Then you will tell me I am doing it in a selective way.

MR. SEGAL: The only problem, your Honor, is that this exhibit, 206, contains other transactions appended to --

THE COURT: I can't help that, Mr. Segal. That's the way the exhibit went in.

I am not going to bowdlerize any exhibits. The way to cut that back is to look at this 353 so that the jury will know what the limitations are of their inquiry.

MR. SEGAL: We have no objection to what is mailed. I mean, that would be the entire transaction and that is not what we are talking about.

The 353 is in the nature of a summation or an editorializing.

THE COURT: I say eliminate that, unless you want it. It is what everybody who wanted to investigate this thing would want to look at because it would help you to understand 205, 206 and 263. I am rubbing out the number 353 from number 2.

Now, let me see the next. I guess I will have to look at every one of them.

MR. SEGAL: In light of that, I think the Government might be able to pare it down. If what they know is that you are alleging a mailing and send a mailing situation in, that's it and then I think we can neaten this up and that's all we are asking.

THE COURT: I think wherever 353 is referred to, if it comes out, that probably will cure this list. I will take it out every place it appears here, the compilation.

Is there any other compilation, Mr. MacDonald, or are these exhibits only the raw material that are now listed here? You know what I mean by the raw material? I mean the transaction itself -- both sides of the transaction, as shown by the communication in interstate commerce or the mails.

MR. MacDONALD: Yes, sir.

THE COURT: Show it to Mr. Segal, please.

Look carefully to see if I have rubbed out every 353, Mr. Segal. I intended to.

MR. SEGAL: Your Honor, there is just one 353 on Count 41.

THE COURT: Take an eraser and get rid of it, please. Black it out, erase it, do anything you want.

(Court Exhibit 63 marked.)

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THE COURT: If you are in doubt as to any number, just ask Mr. Sussman to give you the exhibit so you can see what it is.

MR. SEGAL: Can we see 4-H, please?

Your Honor, this is the representation, you see, that we don't want.

THE COURT: I just want the transactional document.

MR. SEGAL: That's all I want.

THE COURT: If it is not a transactional document, call it to Mr. Sussman's attention.

MR. SEGAL: It is not. Let the Government go through it, because our other items here --

MR. SUSSMAN: It depends how you define "transactional document," your Honor. This is a document which I don't know specifically --

THE COURT: It's a document put into the mails or in interstate commerce touching an aspect of the transaction, either on the buy side or the sell side.

MR. SUSSMAN: I think we are beyond the mail and wire fraud counts and into the Securities Act counts. I believe that is what the 4-H thing relates to.

THE COURT: Well, let me suggest that we can deal with this.

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Mr. Segal, apparently Counts 2 to 28 can be separated out from the other counts and while the jury is listening to the testimony and we send them the information on 2 to 28, the lawyers and the Court can work on the next set of counts to see that there is nothing in there that is of the nature of an interpretive matter.

So, clear up 2 to 28 first. That is enough for them to get started when we send it in.

Does it happen to break off? All I am asking you, on the first go-round, is to clear 2 to 28 and then I will rewrite it on another sheet and after we have heard the Karfunkle testimony, we will give them 2 to 28 and then, in the meantime, while they are deliberating, we will send in information about the subsequent counts.

MR. SEGAL: Your Honor, one of the problems that we have coming up is with regard to the wire counts and the Government is asking that the phone bills go in. I don't disagree with that but they are also --

THE COURT: Are the phone bills beofre them? It's just a matter of pointing out the page on the bill.

MR. SEGAL: That they have done but then, what they have also done is Exhibit 77, is that it, which is the phone card index of Select, and the Government is asking them to go through that card index so that they

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can find the name and telephone number for Alan Segal in order to see whether or not the phone numbers which they have put in on the phone bills relate to that name.

THE COURT: How do they tie up a telephone number to a person if you don't tell them to look at Exhibit 77 too?

MR. SEGAL: Yes, I suppose that is right.

THE COURT: Do you want to do this? Do you want to list down the telephone numbers of particular persons and not give them the phone index?

MR. SEGAL: No, no. I'll give them the phone book.

THE COURT: All right.

MR. SEGAL: I will give them the book without pointing out things, your Honor. Let them have the phone book.

THE COURT: All right. You don't have to take that apart. I am going to rewrite it while the reading goes on here and we will deal then with the next one.

Send for the jury and we will have the reporter read the Karfunkle testimony concerning Mr. Gardner.

MR. BRODERICK: Your Honor, I didn't hear what you said on that note again.

bs12

THE COURT: "Can we please listen to Karfunkle's testimony in regards to Mr. Gardner."

MR. BRODERICK: Is it intended to offer the SEC testimony of Mr. Karfunkle? It's very short.

THE COURT: didn't you read it into the record?

MR. BRODERICK: I don't think it was ever read into the record.

THE COURT: Anything by Mr. Karfunkle that has to do with Gardner will be read by the court reporter; anything that is in evidence. Pass it up to the reporter.

Is it marked in a particular place?

MR. BRODERICK: It's only the short ones that we put into evidence. You remember where the Court red lined it.

THE COURT: All right. Pass them up here and we will take care of that.

(The jury entered the courtroom at 11.50 a.m.)

THE COURT: Ladies and gentlemen, you have asked for Karfunkle's testimony in regard to Mr. Gardner and the court reporter will now read it to you. He will read to you, first, the trial testimony and also certain testimony that was given at the Securities and Exchange Commission. That is also in evidence.

(Record and exhibit read.)

bsl3

THE COURT: Now, Mr. Veguilla, you have asked for certain exhibits connected with Counts 2 to 28 and we have put the information down and I am handing you that sheet. We will work on the further request of 29 to 40 and 41 to 51 in the meantime, but we will give you this as a starter.

You may now take your jurors out and continue deliberations.

(The jury left the courtroom to resume deliberations at 12.20 p.m.)

THE COURT: I notice, Mr. MacDonald, that there is no entry against Count 27 or Count 28.

MR. MacDONALD: In those instances, your Honor, there was no physical piece of paper.

THE COURT: You mean that was an intentional blank?

MR. MacDONALD: Yes.

THE COURT: Let's turn our attention to the next group of exhibits.

What about the next group of exhibits? That's 29 through 40. Are there any of these exhibits that have to be looked at by the Court to determine whether they are merely references to the items requested or whether they go beyond that?

bs14

Do you have those in mind, Mr. Segal?

MR. EHRLICH: Your Honor, in the discharge of my responsibilities, I would like to state for the record and inform the Court that during the course of my opening statement to the jury and my summation to the jury, I stated that the evidence in this case is the testimony and the exhibits in this case and that it was the jury's function to consider the evidence, to review the evidence and consider what evidence applies to each and every defendant, and it is my position that that is the function of the jury. For the Court to submit or for the prosecution to submit any exhibits, in fact, to me seems as if it is another opportunity or, in fact, being able to address the jury as to matters now solely within the determination of that body.

THE COURT: Mr. Ehrlich, that's exactly what happens all the time when the jury asks a question; they get an answer.

Would you say that the reading of the testimony in the Gardner situation was another means of somebody addressing the jury, including Mr. Broderick?

MR. EHRLICH: No. I am not addressing myself to that.

THE COURT: I understand you are not but you

bs15

are blinding yourself to what is going on. The jury is asking for specific information. They are not changing the rules of law set forth in the charge.

MR. EHRLICH: Your Honor, they are examining which exhibits apply to a certain defendant or a certain count.

THE COURT: They didn't say that. They said which exhibits applied to this count. they didn't say anything else.

MR. EHRLICH: I respectfully submit that it is my position that is their sole function, that they have the exhibits, all of them, and they must make that determination.

THE COURT: All right.

MR. RICHMAN: Does your objection stand to all the defendants, your Honor?

THE COURT: I have no objection. I am merely listening to a monologue by the gentleman, who calls certain matters to my attention for whatever value it may have.

MR. EHRLICH: I'm sorry if I didn't make that clear. I submit it to the Court as an objection.

THE COURT: What do you want me to do about the objection?

bs16

MR. EHRLICH: My position is that I will not take any part in consenting with the Government with respect to any documents or exhibits to be noted to the jury and I object to the submission of any documents to the jury.

THE COURT: All right. Your objection is noted.

MR. EHRLICH: Fine. Thank you.

(Recess.)

MR. SUSSMAN: Your Honor, I believe that we have agreed entirely with the exception of Counts 36, 38 and 39. They are among the Section 17 counts and the dispute is whether the documents which the Government con tends to have been fraudulent, things like the three-fold flier, the newsletter that Chapel wrote and the certified balance sheet of March 28, which were provided to the lenders in those particular transactions, contemporaneously with the transactions, shall or shall not be designated to the jury.

THE COURT: I rule that they should be.

MR. SUSSMAN: In that case, this list which I hand up reflects the current status. I will say that we have eliminated them from the Section 5 counts, which do not have fraud as a necessary element.

THE COURT: All right.

I will rewrite the information on this master sheet and send it in to the jury.

MR. EHRLICH: Your Honor, may the record reflect --

THE COURT: Mr. Ehrlich's objections continue.

MR. EHRLICH: Yes, and there was no agreement --

THE COURT: Mr. Ehrlich's objections continue in all respects. Mr. Ehrlich can remain outside the pale of the response of the Court.

MR. EHRLICH: Fine. Thank you, very much.

MR. SEGAL: Your Honor, have you noted for the record the numbers of the items going in, the document which embodies the numbers that you are sending in to the jury?

THE COURT: They will be marked Court's exhibits.

MR. RHODES: I would like to make an objection.

Defendant Barnett objects to the submission in response to the request under consideration by the Court to Exhibits 4-E, 4-H, 4-K, or any series 4 exhibit for the reason that there was no testimony relative to the knowledge of Barnett that such instruments would be

bs18

used and, further, that the Court is pointing out to the jury certain specific items which the jury may consider relative to Barnett and thereby marshaling evidence against Barnett unwarranted.

MR. SEGAL: Your Honor, on that request, have they limited --

THE COURT: Look, I am going to get off the bench here if this is just an opportunity for you fellows to think up things and belabor the record. I have no objection to your stating your legal positions, but I am not sitting here for the purpose of taking impromptu submissions.

Go ahead and tell me anything that you want to say.

MR. SEGAL: I just wondered whether that request would have embodied the defense exhibits in connection with those items. I don't know.

THE COURT: Any defense exhibits that bear on the subject should also be submitted and it is up to you to point out what they are.

They are asking for the exhibits. They didn't say whose they were.

MR. SEGAL: Very well, your Hono

THE COURT: If there are any defense exhibits,

bs19

they definitely should be proposed or called to their attention.

I think all they want is help in going through the tonnage.

The list of exhibits in response to Court's Exhibit 62 pertaining to Counts 29 to 41 is transmitted to the jury through the marshal.

The agreed list for Counts 41 to 51 of the exhibits is now transmitted to the jury through the marshal.

(Recess.)

(Notes received from the jury at 2.45 p.m.)

(In the courtroom at 3.10 p.m. - jury not present.)

THE COURT: This note says:

"Can we have Dr. Knisely's SEC transcript testimony."

The note is marked Court Exhibit 64.

(Court Exhibit 64 marked.)

xx THE COURT: Has that been redacted?

MR. MacDONALD: It has not. I am not sure that it is going to be very lengthy.

MR. LESSER: There is nothing to be redacted in it, that I know of. I think we can give it to them just the way it stands.

bs20

MR. SEGAL: We will take a look at it, your Honor, an see about it.

MR. MacDONALD: We have an agreed transcript.

THE COURT: That is Item 1. No. 2 is Court's Exhibit 65 and it reads:

"In regards to Select Securities, did a registration statement as to such securities have to be in effect with the SEC."

Does anybody have a suggestion?

MR. RHODES: Your Honor, could you tell them no?

THE COURT: Would you, as a faithful, competent member of the bar of this Court expect me to do so?

MR. RHODES: May I say I decline to answer on the grounds that --

MR. CONCANNON: Your Honor, maybe it would be an appropriate time to just indicate the contentions of the parties, that on the Government's behalf it is and in ours, it is not.

THE COURT: I am glad you prefaced that with the word "maybe".

How do you want to answer this question, gentlemen?

MR. RHODES: Would it be proper to make a state-

ment that in so far as the shares of stock that were outstanding and issued and undistributed, prior to 1933 --

THE COURT: Were there any Select Securities outstanding and issued prior to 1933?

MR. RHODES: Yes, sir.

THE COURT: There were?

MR. RHODES: That's the original list.

THE COURT: I thought that Select Industries was a device that was created in 1970.

MR. RHODES: Well, Select, your Honor, is one and the same as Goldfield Candelaria. There is no way that you --

THE COURT: The purpose here is not to attempt to confuse the jury but to assist them.

I can handle this in a simple way, by a simple response, or I can read them the Section 5 charge. Which do you prefer?

MR. RICHMAN: I think Mr. Rooney may have the answer to that.

THE COURT: Have you a suggestion as to how to handle this, Mr. MacDonald?

MR. MacDONALD: Yes, your Honor. I have reflected and I think that an unequivocal "Yes" on the facts and circumstances of this case is an appropriate

bs22

and error-free answer. There was a public distribution in effect during 1970. That evidence is virtually undisputed in terms of the sales and the employment of the means and instrumentalities of commerce and it does not come within the exemption provision. It is a re-accumulation and redistribution of the securities which conceivably, in theory, might one day have been exempt.

THE COURT: I think what I will do is to have the jury in, call their attention to the statute and re-read that portion of the charge that deals with the essential elements of the sale of unregistered shares.

I think that there would be a simple way of doing it, if there were a forthright and frank acknowledgment of what the evidence shows but, lacking that, we will proceed in the other way.

What about the Knisely testimony.

MR. MacDONALD: The Knisely testimony as between the Government and Mr. Knisely's attorney is settled. There was nothing deemed prejudicial in the original colloquy and if some counsel have something in mind, we ask that they hop to it. Otherwise, we will staple one up and send it in.

MR. SEGAL: I don't like this "hop to it". We have got some things to settle. I would like to take

a look at it now.

THE COURT: Well, go ahead and look at it.

(Pause.)

MR. ROONEY: Your Honor, I have an objection. I ask your Honor to look at pages 24 and 25, where Dr. Knisely says that he spoke to Bissett on the telephone a couple of times and I don't think this should go to the jury. I don't see any way that Knisely had to identify the voice of Bissett. It's being offered not as a commission but as a part of the Government's evidence against Bissett.

THE COURT: We will have the jury in and I will dispose of Court's Exhibit 65, first, and then I will read the Knisely testimony myself to see if there is any conceivable objection to sending the transcript in.

Bring in the jury.

(The jury entered the courtroom at 3.20 p.m.)

THE COURT: Members of the jury, I have your note signed by Mr. Veguilla, reading:

"In regards to Select Securities, did a registration statement as to such securities have to be in effect with the SEC."

My response to you will be to call to your attention what the law is.

Securities which are offered to the public through the mails or the channels of interstate commerce must be registered with the SEC by the issuer.

Counts 41 through 51 charge the defendants with 11 separate violations of Section 5-A of the Securities Act of 1933. That statute reads:

> "Unless a registration statement is in effect as to a security, it shall be unlawful for any person directly or indirectly to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise or to carry or cause to be carried through the mails or in interstate commerce by any means or instruments of transportation any such security for the purpose of or for delivery after sale."

That's the statute, Section 5-A of the Securities Act of 1933.

It also has another number. I think it is 15 USC Section 77(e), if my memory serves me correctly.

I charged you that to convict a defendant on the securities counts, you must find beyond a reasonable doubt as to the count you are considering each of the

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following elements:

First, the defendant unlawfully, wilfully and knowingly used or caused to be used the mails or interstate facilities to sell Select stock or through such facilities caused to be carried the stock in connection with the sales;

Second, that the Select stock sold was not registered with the SEC, although required to be registered by the Securities Act of 1933.

It was stipulated here that no registration statement was ever filed for Select Enterprises stock.

The Government has continued throughout this case that the defendants caused to be sold or aided and abetted in the public sale of unregistered stock in public offerings thereof and Counts 41 through 51 involve mailing or interstate facilities.

A third and another essential element of this offense is that the defendant knew that the offer, delivery and sale of Select Enterprises stock required the filing of a registration statement and wilfully and knowingly caused the use of the mails or interstate facilities directly or indirectly in the sale or delivery of these unregistered shares.

It is not necessary for the Government to

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establish that the defendant knew he was breaking any particular law or any particular rule. Here, as in other phases of this case, the significant fact is the particular defendant's state of mind.

My instructions as to wilfulness, knowledge, specific intent and evil motive or purpose apply to these counts as well as to the others.

The law would exempt the transactions here involved if no public offering were involved. Offering shares through the pink sheets involves a public offering and if you find that Select stock was so offered by Select through dealers who went into the pink sheets at its behest, a public offering is involved by an issuer.

I believe that that covers the scope of your inquiry.

You further requested certain data in connection with Dr. Knisely. We are trying to put that togeter and we will send it in to you as soon as soon as we can.

You may go out.

(The jury left the courtroom to resume deliberations at 3.28 p.m.)

MR. SEGAL: Your Honor, I would again reiterate the objections that had been made to the Court's charge initially at this point in time and indicate further that

bs27

while the Court has indicated the Government's contention, it has not indicated the defendants' contention in this case and it has alluded to the fact of the pink sheets as an element, which the defendants contend does not indicate, as far as they are concerned, a public offering.

THE COURT: On the subject of Dr. Knisely, have you gone through the transcript?

MR. MacDONALD: Your Honor, the marked set that I provided counsel was inadvertently left in his offices, and I think that I can re-mark faster than starting anew. Why not do that and then let defense counsel object to what I re-mark, if they wish to.

(Court Exhibit 66 marked.)

(Recess.)

THE COURT: Is this redacted document in satisfactory form to everybody?

MR. MacDONALD: To the Government, your Honor.

MR. RHODES: Subject to one objection, to Barnett. The objection is already made and the Court has allowed it in but I want to make my objection to it.

THE COURT: What do you object to?

MR. RHODES: Page 35, lines 3 through 7.

THE COURT: The witness was being asked who was present at a particular time and he made a response to

bs28

that and identified who was present. I will allow that to go in to the jury and give you an exception.

This may go to the jury with the consent of all parties, subject to Mr. Rhodes' objection as to that one answer.

(Redacted copy of Exhibit 22 sent to the jury.)

(Recess.)

(At 5.30, a note was received from the jury and marked Court Exhibit 67.)

(At 5.45, in the courtroom.)

THE COURT: This is a note that says:

"Judge Pollack, for your information, as of this moment we have reached a complete verdict on seven defendants. We are still deliberating on the rest."

I suppose what we should do is take the verdict and let them deliberate.

Bring in the jury.

(The jury entered the courtroom at 5.46 p.m.)

THE COURT: Mr. Veguilla, I have your note in which you say that "As of this moment we have reached a complete verdict on seven defendan-s. We are still deliberating on the rest."

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We will therefore receive your verdict, the verdict that you advise that you have at this time.

Do you have that written down somehow or do you know exactly what you have reached unanimously?

THE FOREMAN: Yes. It is inside.

THE COURT: It is inside?

THE FOREMAN: Yes.

THE COURT: Will you go and get it and bring it back, please?

(Pause.)

(The foreman handed papers to the Court.)

THE CLERK: Mr. Foreman, have you reached a unanimous verdict as to the defendant William Wayne Barnett?

THE FOREMAN: Yes.

THE CLERK: What is your verdict as to Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

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THE FOREMAN: Not guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant Roger Bissett?

THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict as to Count 1, sir?

THE FOREMAN: Count 1, not guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant Joe Truman Boyd?

THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: Guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Guilty.

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THE CLERK: Counts 41 to 51?

THE FOREMAN: Guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Guilty.

THE CLERK: Have you reached a unanimous verdict as todefendant Robert E. Ford?

THE FOREMAN: Not yet.

THE CLERK: No?

THE FOREMAN: No, sir.

THE CLERK: Have you reached a unanimous verdict as to the defendant Michael Gardner?

THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Count 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant Ernest Darwin Goodloe?

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THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: Guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant M. S. Knisely?

THE FOREMAN: No, sir.

THE CLERK: Have you reached a unanimous verdict as to the defendant Ernest R. Mullenax?

THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: Guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Guilty.

THE CLERK: Counts 41 to 51?

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THE FOREMAN: Guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant Marvin J. Rappaport?

THE FOREMAN: No, sir.

THE CLERK: Have you reached a unanimous verdict as to the defendant Stanley Schleger?

THE FOREMAN: Yes, sir.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40.

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE CLERK: Have you reached a unanimous verdict as to the defendant Emerson F. Titlow?

THE FOREMAN: No, sir.

THE CLERK: Have you reached a unanimous verdict as to the defendant Edward Vanasco?

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THE FOREMAN: No, sir.

THE CLERK: Members of the jury --

THE FOREMAN: I can make a correction.

Mr. Mullenax, on the last count, 52, 53, is not guilty.

THE COURT: Not guilty of 52 and 53?

THE FOREMAN: Yes, sir.

MR. SEGAL: Your Honor, on behalf of the defendant --

THE COURT: Just a minute, please. I am not through yet.

Now, members of the jury, having heard your foreman announce these several verdicts, the clerk will now poll you to find out whether that is your individual verdict also.

(Each juror, upon being asked by the clerk, "Is that your verdict," answered in the affirmative.)

THE CLERK: And so say you all.

THE COURT: Now, ladies and gentlemen of the jury, your note says that you are still deliberating on the remainder, so that you may retire for further deliberations.

(The jury left the courtroom at 5.55 p.m. to continue deliberations.)

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THE COURT: Now, I take it that first, in respect of the not guilty verdicts as announced by the jury, is there any application by the Government?

MR. MACDONALD: There is no application, your Honor.

THE COURT: Accordingly, the defendant William Wayne Barnett is discharged.

The defendant Roger Bissett is discharged.

The defendant Michael Gardner is discharged, subject to the detainer.

The defendant Stanley Schleger is discharged.

Any bail in any of those cases just recited is exonerated.

Now, is there any application on behalf of Joe Truman Boyd, Mr. Segal?

MR. SEGAL: Your Honor, I would request that Mr. Boyd be continued on his present bail, which is personal recognizance bond in the amount of $10,000. His bail limits have been extended to allow him to return, of course, to his home in Texas. I believe that there has been application and I am not quite certain of this, to extend those bail limits to places normally within the ambit of his business travels and I would ask that those limits be preserved as of now so that Mr. Boyd may continue his business and return to his home.

Further, I would indicate to the Court that it is

the intention of Mr. Boyd to file a notice of appeal and, with that in mind, we would await, of course, whatever the probation report would have for Mr. Boyd. I am not sure whether that is a three or a four week period for sentencing.

Since it is now six o'clock on Saturday, I am not certain that the probation office is even open and I would ask that Mr. Boyd be enabled to return to the probation office on Monday morning at nine or 9:30 when they open, so that he can consult with the probation officer to whom he will be assigned.

THE COURT: Well, the first subject is the matter of bail. What is the government's position on that?

MR. MAC DONALD: Your Honor, the status of Mr. Boyd is markedly different now than it was when the government agreed to the $5000 personal recognizance bond. I should advise the Court that there was never really a clarification of the travel limits in respect of Mr. Boyd. He was limited to the Southern District of Texas and New York and nowhere else and there was no application either to constrict or expand it ever presented to your Honor.

We would ask that he post a cash or surety bond in the sum of $15,000 on Monday, by 5:00 p.m., to permit his freedom for the time prior to sentence and during any appeal period; at least through the sentence period. And, we would

ask that his travel be restricted to his home district and to the Southern District of New York.

We are unaware that he has any gainful employment that requires his traveling anywhere.

THE COURT: His home district and what?

MR. MAC DONALD: I believe it is the Northern or Western District of Texas, and I will inform myself in that regard.

THE COURT: What do you say to that?

MR. SEGAL: In that connection, since Mr. Boyd was enlarged on PRB for whatever reason the government feels that an additional bail is needed, I would request that the Court ask that a PRB be filed for Mr. Boyd as of Monday morning; that under any circumstances Mr. Boyd be continued under his present bail at least until Monday, when the additional bail can be posted. I am afraid that the amount of $15,000 may under the present circumstances possibly be tantamount to no bail at all and, for that reason, I have asked the Court for the expansion of the personal recognizance bond and, in the alternative, if the Court is disinclind to do that, that the amount requested by the government be a $5000 bond, which can be in cash or whatever other surety he is able to obtain.

Now, as far as bail is concerned, I just don't have

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access to a bondsman at this hour and I would request that if a bond is to be posted, that I be given until noon on Monday to obtain that.

Your Honor, with regard to the travel, for the time being the enlargement to his home would be adequate. I will consult with Mr. Boyd and see where and for what reasons the enlargement is necessary and will make appropriate application.

THE COURT: Well, I would have thought that the bail that the government should appropriately request, considering the magnitude of this matter under all of the facts and circumstances as they developed in the evidence, would have warranted a substantial bond.

The insubstantial suggestion of $15,000, as long as the government is making it, will not be overridden by me but certainly a $15,000 cash bond will be required.

Mr. Boyd will have the opportunity to post that at any time on Monday before the close of the Clerk's office. He is continued until that time in the present bail situation.

So far as making arrangements with the probation department, I have no control over that. The requirement is that a probation report should be obtained and one will be required here. It may be that they can expedite it if you take it up with the chief or deputy chief on Monday and point out what the circumstances are, that he comes from a distance.

So far as the bail limits are concerned, we presently have New York and Texas as those limits and you can let me know on Monday if there is any reason for any modification.

MR. SEGAL: Very well, your Honor.

Your Honor, when the Court said Texas, I take it it would include all districts within Texas.

THE COURT: Yes. It's a big state. He can have all districts.

MR. SEGAL: Thank you.

THE COURT: Mr. Stokamer for Mr. Goodloe.

MR. STOKAMER: Yes, your Honor. Mr. Goodloe is also on a personal recognizance bond and I think that the Court is aware that he has no funds, that I have been assigned pursuant to the Criminal Justice Act. While your Honor was ruling with respect to Mr. Boyd, I inquired as to whether or not Mr. Goodloe could make any cash bail. He advised me that, given a week, he could probably make $2000 or $2500 in cash but that, right now, he has nothing and I assume that means that he would have to borrow the money. I don't think that he is a risk, as far as appearance goes. Certainly. he has always come when needed on a telephone call, and in view of his circumstances I would ask that your Honor continue the

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personal recognizance bond or, in the alternative, give him a week or so to raise any cash needed.

MR. MacDONALD: I would report to the Court that Mr. Goodloe has a business enterprise of some sort or another in Mexico City and, in addition, has been an unarrested defendant -- I am not sure if I should say a fugitive or not -- on an indictment out of Dallas County for some five years.

We would ask that a substantial increase in the existing personal recognizance bond be made. We would recommend the sum of $15,000 cash or surety bond, and that his travel be similarly restricted to his home district in Texas as well as the Southern District of New York.

THE COURT: I should have inquired, in the case of Mr. Boyd, does he have a passport? The usual requirement is the surrender of the passport immediately.

MR. SEGAL: There is no passport, your Honor.

THE COURT: Does Mr. Goodloe have a passport?

MR. STOKAMER: Yes, your Honor. He has it in Texas, at his home.

THE COURT: Well, that should be forthwith surrendered.

MR. STOKAMER: With respect to Mr. MacDonald's statement, Mr. Goodloe has told me that he severed any

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relations in that attempt at business in Mexico City. He says that he severed his relations upon being indicted in this particular case.

I can tell this Court that when Mr. MacDonald advised me that he, meaning Mr. Goodloe, had been indicted in Texas, I spoke to Mr. Goodloe about it and I believe I also advised Mr. MacDonald that the indictment which purportedly came down some years ago was never served, nor was Mr. Goodloe notified of any such indictment by anyon except Mr. MacDonald through me and I don't think that that is any reasonable reason for saying that he won't be in this court or any other court when required and, from what Mr. Goodloe advises me, should the bail be set at what the Government requests, he would be incarcerated. He tells me he would not be able to make that kind of bail.

THE COURT: I will fix a $5000 bond, cash or surety, to be posted within one week.

MR. STOKAMER: Thank you very much.

THE COURT: That is, by the close of the Clerk's office on Friday, the 24th of October.

MR. STOKAMER: Thank you very much, your Honor.

MR. SEGAL: Your Honor, if I may speak for a moment again, I believe that the Court indicated a cash bail for Mr. Boyd.

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THE COURT: Cash or surety.

MR. SEGAL: Or surety?

THE COURT: Yes.

MR. SEGAL: Is it possible to extend the period of time beyond Monday? I have spoken with Mr. Boyd while the other elocution was going on --

THE COURT: Until when?

MR. SEGAL: Well, if we could have until the end of the week, as with Mr. Goodloe, it might might very well --

THE COURT: Any objection to that?

MR. MacDONALD: No, sir.

THE COURT: All right. October 24.

MR. SEGAL: Thank you, your Honor.

THE COURT: Mr. Ehrlich for Mr. Mullenax.

MR. EHRLICH: Yes, your Honor. I would ask your Honor for leave to reserve all motions to the date of sentence in accordance with customary --

THE COURT: I will not reserve motions until the date of sentence and any that should be made should be made in due course.

MR. EHRLICH: Yes, your Honor. I would ask your Honor to continue the defendant Mullenax on the present bail, $10,000 bond, and $1000 cash, and his bail limits

bs43

are the continental United States.

THE COURT: Mr. MacDonald?

MR. MacDONALD: Yes, sir. I am advised that we are aware that Mr. Mullenax has not any current gainful employment and we would ask, No. 1, that the travel restrictions be limited to his home district in the Southern District and, in respect of the amount --

THE COURT: Home district and New York?

MR. MacDONALD: And New York, only, yes, and with respect to the amount, we would ask for a $10,000 cash or surety bond and not the 10 per cent PRB requirement.

MR. EHRLICH: Your Honor, may I point out that defendant Mullenax is presently working. He is in the travel agency business, and he has those agencies in Texas, Arkansas, Illinois and Missouri.

THE COURT: Does he have a passport?

MR. EHRLICH: It has been turned over to the United States Attorney's office.

MR. SUSSMAN: We have had the passport for about a month now, your Honor.

MR. EHRLICH: And he must travel in connection with his business. He is the general manager.

THE COURT: That's Texas, Arkansas --

bs44

MR. EHRLICH: Missouri and Illinois and Indiana and, of course, he lives in Oklahoma.

THE COURT: Is there any objection to the limits of the five states?

MR. MacDONALD: No, sir.

THE COURT: You may have permission until the date of senence for that purpose.

The bail will be fixed at $10,000 cash or surety.

MR. EHRLICH: May we have until the close of--

THE COURT: Until October 24 by the close of the Clerk's office at that time.

MR. EHRLICH: Thank you, very much, your Honor.

MR. STOKAMER: Excuse me, your Honor. Mr. Goodloe has just asked me to request of the Court permission to allow him to go to Southern California wher he tells me he has some business.

THE COURT: These requests undoubtedly will be forthcoming and I have always taken the position that, instead of drawing me into a judicial determination on facts that I don't know anything about, I prefer to have you take them up with the Government and the Government is authorized by me to extend the privileges upon obtaining an affidavit and, where there is any controversy, then

bs45

either side can come back to me on them, so I suggest that within that framework you take it up with Mr. MacDonald or Mr. Sussman.

MR. STOKAMER: Thank you.

THE COURT: I think that Mr. Segal, Mr. Stokamer and Mr. Ehrlich should bear in mind that I am not reserving until the date of sentence on motions so that you may consider it appropriate to make your motions at the present time.

MR. SEGAL: Your Honor, I presently renew all motions heretofore made and ask the Court if it is appropriate for a judgment, notwithstanding the verdict.

THE COURT: Motions denied. It seems to me that the verdict was amply justified by the overwhelming evidence.

MR. STOKAMER: Your Honor, I ask for a trial order of dismissal or an acquittal in view of the fact that on the whole case the Government has not proven the defendants guilty beyond a reasonable doubt.

THE COURT: Motion denied.

Mr. Ehrlich.

MR. EHRLICH: Yes, your Honor.

The defendant Mullenax respectfully requests a verdict of acquittal pursuant to Rule 29 in that the

Government did not establish its case beyond a reasonable doubt or the proof is not beyond a reasonable doubt against the defendant Mullenax.

THE COURT: Motion denied.

The date for sentence in each of the three cases will be fixed for December 2, 1975, at 9.30 a.m. That will be in Courtroom 519.

Mr. Ehrlich, the reporter says that he has two different statements of the states that Mr. Mullenax wants to be able to travel in and I will recite them and you let me know whether these include all of the states, whether this is the approved list:

Oklahoma, Texas, Arkansas, Missouri, Illinois and Indiana.

MR. EHRLICH: Yes, your Honor. That is correct.

THE COURT: There being no further business in the case of the seven whose verdicts have been taken, they may depart at their convenience.

(Recess.)

THE COURT: Mr. Goldman, Mr. Lesser, Mr. Berger, and Mr. Concannon, we are now at almost a quarter of seven on Saturday night. If applications were made by the defendants, concurred in by the Government, I

RDP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
versus	
ERNEST R. MULLENAX, Defendant.	75 Criminal 140

New York, N. Y.

December 2, 1975 - 11:30 a.m.

Before

HON. MILTON POLLACK,

District Judge.

APPEARANCES:

THOMAS J. CAHILL, Esq.,
United States Attorney for the Southern District of New York
W. CULLEN MacDONALD, Esq.,
Assistant United States Attorney

JOSEPH B. EHRLICH, Esq.,
Attorney for Defendant

- - -

THE CLERK: United States of America versus Ernest R. Mullenax, for sentencing.

THE COURT: Mr. Ehrlich?

MR. EHRLICH: Yes, your Honor.

THE COURT: Do you wish to say anything on behalf of your client, Mr. Ernest R. Mullenax, before imposition of sentence?

MR. EHRLICH: Yes, your Honor.

With your Honor's permission, your Honor has been good enough to make available for counsel for the defendant Mullenax the pre-sentence report.

There are certain minor matters that I first would like to clarify. The report states that certain authorities in various states have no record of the firm with which Mr. Mullenax is now connected. The firm is not a corporation, and that is the reason therefor.

Secondly, it is pointed out that one of the firms located in California, the proper authorities report, has an address at 505 Euclid Avenue. In the last two months, the company moved to 600 Euclid Avenue, and Dr. Mullenax gave the proper address when he was before the probation officer.

As your Honor knows, Dr. Mullenax submitted a full financial disclosure, and the discrepancy between the

amount of net worth reported therein and the amount that originally was given to the probation officer is explained because of evaluation of the enterprises which are set forth in the probation report.

Otherwise, Dr. Mullenax is fifty-six years old. He has been married thirty-five years. He has four children, two sons, two daughters,and he has five grandchildren. He has been an arduous worker and devoted to his family. He has no prior criminal involvement or contact with the law at all.

The Court, I believe, has seen his demeanor. He has complied with all court orders, processes and the like.

This present prosecution has exacted more than enough punishment. I believe your Honor has before him the numerous letters written in his behalf by professional and more humble people. I could not even remotely speak in the eloquence that those letters are written in. In part they indicate that Dr. Mullenax is an honest man in his dealings, a true professional as a doctor, and his reputation is widely known.

The letters indicate, as one person has written:

"I consider Ernest Mullenax to be a loyal friend, a loyal husband, a father, honest business man and a

loyal church man, a loyal American. I cannot conceive of a man of his character being placed in a penal institution."

Other letters indicate that these people had a great deal of love and respect for Dr. Mullenax. "As near as I know, he never refused to care for a person, regardless of his ability to pay."

I can imagine the stress and strain this places on all the members of his family, including his wife, his children, his mother and father, not to mention his host of friends and associates.

Now, another:

"He was a good man to work for, kind, considerate and thoughtful. He was never too busy. It was never too late or too early for him to care for his patients."

Your Honor, since he has never been in any kind of trouble before, would you please be lenient with him. This man has an excellent community reputation. He has served domestically and abroad in the submarine service of the United States Navy during World War II. He was honorably discharged in 1946. He was awarded the American Theatre Victory Medal. He is a licensed chiropracter in three states and the Commonwealth of Puerto Rico, president of his class, straight-A student for four years. He was and is

maintained in the highest esteem professionally and otherwise.

He was elected, from 1963 to '65, as secretary of the Missouri State Chiropracters Association. That is a body of two thousand members. In 1963, he was designated Chiropracter of the Year from Missouri at the Golden Anniversary Convention of the Missouri State Chiropracters Association. He was the president of the Kiwanis Club in Jefferson City, Missouri.

He has provided for his family and worked hard. His present prosecution and conviction has been a severe burden and embarrassment. One fact not reflected in the pre-sentence report -- and I would like to bring this to this Court's attention -- is that since late 1971 his wife, Margaret, was informed that she had a serious cancer condition. At that time, she was only given one to one and a half years to live. This explains why in 1972, 1973 and 1974 was the first time that Dr. Mullenax did not devote himself to any real outside interests. Fortunately, his wife is still with us.

They are very proud people, and I ask that the Court take this into consideration, that this man has already, family-wise, community-wise, business and in all respects, suffered more than enough punishment.

I would also like to point out in this regard an incident that I personally saw one day during the course of the trial. I had gone over to Mr. MacDonald's office to pick up 3500 material. Dr. Mullenax and his wife were waiting outside in my car. When I went downstairs, I saw Mrs. Mullenax and I asked where Ernie was, and she pointed. He was there; he took off his jacket, helping a young lady fix a flat tire. The young lady said, "In all my years in New York, I never thought I would see this."

It is another indication, in addition and in conjunction with the sincerity set forth in the letters submitted in his behalf.

Furthermore, your Honor, it may be predicted with reasonable certainty and confidence that the defendant will not ever again run afoul of the law. The defendant owes every penny borrowed, not stolen, with the interest to date. Permit him to repay it. Permit him to be with his family, his wife, his children, his parents and the professional business and local community that are dear to him and find him dear and who have set forth in their letters of recommendation that he would be an asset to any community in which he would choose to reside.

It is our hope, as well as the hope of those who need him and respect him, that this Court will admit him to

probation. Your mercy would be very much appreciated and respected.

Thank you very much, your Honor.

THE COURT: Ernest Mullenax, is there anything you want to say on your own behalf before the imposition of sentence?

THE DEFENDANT: No, your Honor. I think I will rely on my counsel.

THE COURT: Mr. MacDonald?

MR. MacDONALD: The Government has nothing to add to the pre-sentence report before the Court.

THE COURT: This defendant who is now before the Court, having been convicted after trial on fifty-one counts of an indictment in which he is charged with criminal conspiracy, mail and wire fraud and securities fraud, declined to discuss the details of the offense and indicated that his conviction would be appealed.

From the proceedings at the trial, it appeared to this Court that this fifty-five-year-old defendant was a non-practicing chiropracter and actually a front man in the scheme of events representing the offenses. The evidence indicated an utter lack of moral and ethical scruple, despite the numerous letters of recommendation that have been written on his behalf.

Evaluating his position in the offenses involved

RDP

in his indictment, it is the judgment of the Court that this defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of two years and on condition that the defendant be confined in a jail-type or treatment institution for a period of six months, and the execution of the remainder of the sentence of imprisonment is hereby suspended, and the defendant is placed on probation for a period of two years, on the usual terms and conditions of the probation order of this Court.

This sentence is imposed on each and every one of the fifty-one counts, to run concurrently.

In addition, the defendant is fined the sum of $10,000 on Count 1, which will be a committed fine.

What is his situation as to bail?

MR. EHRLICH: May he be admitted to bail pending appeal? He is out on a $10,000 surety bond. As I have indicated already this morning, he has in all respects complied with all orders and processes of the Court, appeared each and every time requested, and he has met the higher bail that was set after his conviction.

MR. MacDONALD: We have no objection to his continuation in that status, your Honor.

THE COURT: Bail is continued accordingly.

The sentences are imposed under Title 18, Section 3651.

The defendant is advised of his right to appeal. In the event he cannot afford appeal, upon appropriate application provision will be made.

MR. EHRLICH: Thank you, your Honor.

Excuse me, your Honor. Is the fine deemed stayed pending appeal?

THE COURT: The fine is stayed pending the appeal.

MR. EHRLICH: Thank you very much.

- - -

A 1005

United States District Court for

United States of America vs.

THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: ERNEST R. MULLENAX

DOCKET NO.: 75 CR. 140 MP

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH DAY YEAR: Dec. 2, 1975

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

[X] WITH COUNSEL Joseph B. Ehrlich (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [X] NOT GUILTY on each of counts 52 and 53.
[X] GUILTY on each of counts 1 to 51 inclusive.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly engaging in conspiracy and in the matters charged in the substantive counts of the indictment in respect to the offer and sale of Select Enterprises Inc. stock, by use of means and instruments of transportation & communication in interstate commerce and by use of mails; employing artifices to defraud; obtaining money and property by material untrue statements; and engaging in fraudulent and deceitful practices upon the purchasers and holders of Select securities as collateral. (Title 18, U.S.C., Sections 371, 1341 and 1343, Title 15, Sections 77e, 77q and 77x.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of TWO(2)YEARS on each of counts 1 to 51 inclusive to run concurrently with each other, and on condition that defendant be confined in a JAIL TYPE or TREATMENT TYPE institution for a period of SIX(6)MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period TWO(2)YEARS, subject to the standing probation order of this Court. Title 18, Section 3651, U.S. Code.

-AND-

FINED $10,000. on count 1. Fine to be paid, or deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Fine stayed pending Appeal.

SPECIAL CONDITIONS OF PROBATION

Bail pending appeal fixed at $10,000. cash or surety.

Defendant advised of his right to appeal.

REMITTED AS
JUDGMENT # 75,256
ON December 12 1975

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT
DEC 2 1975
S. D. OF N. Y.

SIGNED BY

[X] U.S. District Judge
[ ] U.S. Magistrate

Milton Pollack

MILTON POLLACK

Date: Dec. 2, 1975

A 1006

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
DEC 8 12 44 PM '75
S.D. OF N.Y.

UNITED STATES OF AMERICA

Docket Number 75 CR 1140

- against -

MILTON POLLACK
(District Court Judge)

JOE TRUMAN BOYD ET AL.,

Defendant-Appellant

NOTICE OF APPEAL

Notice is hereby given that ERNEST R. MULLENAX appeals to the United States Court of Appeals for the Second Circuit from the XX Judgment ___ order ___ other (specify) ___ entered in this action on December 2, 1975 (Date).

ROSENBERG, ROSENBERG & ROCKMAN
(Counsel for Appellant)

Address Two Hundred Garden City Plaza
Garden City, New York 11530

Date December 8, 1975

To: CLERK OF THE COURT
UNITED STATES ATTORNEY, SOUTHERN DISTRICT OF NEW YORK
ERNEST R. MULLENAX
4025 North Meridian Street
Oklahoma City, New York Phone Number (516) 248-4300

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE

___I am ordering a transcript
___I am not ordering a transcript
Reason:
XX Daily copy is available
___U.S. Attorney has placed order
___Other. Attach explanation

▶ TRANSCRIPT ORDER

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE)

Prepare transcript of
___Pre-trial proceedings
___Trial
___Sentence
___Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ___ Funds ___ CJA Form 21

ATTORNEY'S signature Joseph B Rockman DATE December 8, 1975

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages

Date ___ Signature ___ (Court Reporter)

ORIGINAL

OCT 9 - 1975 75 cc A 1997

The defendant
Ernest R Maddox respectfully
moves this Court that
all testimony given by the
prosecution witness William
C Chapel with reference to
the defendant Ernest R
Maddox be stricken from
the record with
appropriate instructions
that the government
exhibits 94A, 125 and
[illegible] also be stricken
from the record with
appropriate instructions
as the grounds that
there is no legally
sufficient connection
with the court, what
[illegible] the
[illegible] with the public hearing and
the testimony and
exhibits, in fact
the wrongful use of the names
of Ernest Maddox have
[illegible] by the prosecutors of this
[illegible] (indicting) Court [illegible] of

A 1008

I have moving ultimately upon and what for
Anderson, the import
of the evidence is fairly
by a recollection which by
law may not be
any publication before
individually have decided
independent of those subject
to the indictment with
respect to select.

Respectfully submitted
Rosenberg Rosenberg +
Parkman
Attorneys for defendant
Ernest R. Anderson

7.5 CR 140 A 1009
10/8/75

Your Honor, the
Defendant Ernest R. Mullenax
respectfully requests that the
Court direct the prosecution
to forthwith turn over
the Farm State Bank file or
portion to counsel. Prior to
trial counsel requested said
file and it was stated that
it was considered "3500" material
Mullenax demands such file
for inspection and at any
Confrontation relative pertinent
and material to his defense.
Confrontation shereby to turn over the Bank file as a whole.

Mr. Mullenax by his
counsel renews his motion
under Rule 16 as amended with
your Honor's permission given
in open court September 26, 1975.
Your Honor has at that time
stated that it would be
Without prejudice with regard
to the prosecution & presentation
of the case against Mullenax
to the Grand Jury. It is
incumbent to counsel a better
the Court make the

A ~~1010~~

proceedings to establish its burden
at this time or after trial, if
necessary.

Respectfully,
Joseph B. Kindel,
R.N. Anderson
attys. defendant
Everett R. Mullenax

OCT 9 - 1975 A 1011

75A140

Your Honor, with respect to all Mullens' financial statements, the defendant Mullens objects to their admissibility on the grounds of relevancy, materiality and on the further bases that their prejudice outweighs any probative value they may have with regard to the contempt. The charge of fraudulent use of debt slash

over please

A 1012

The financial statements
both
can confuse & prejudice
the jury and is not
representative material (& material
as a matter of law
with regard to
Mulberry's extent and
knowledge with respect
to the use of Select
Enterprises, Inc stock

Respectfully
Joseph B. Cahill
P.R. Richman
Attys defendant
Everett R. Mullen

~~In re: Motion to be Considered~~
~~Continuing objection~~
~~with regard to offer~~
~~any further financial~~
~~statements~~

A 1013

OCT 9 - 1975

75 Cr. 140

Ordered that
the underlying be
vacated to not
exceed the $4/80 K amount.
Upon bail noted
Jury to retire Jury.

T J Gurfein
A Hy Mulberg

EXHIBIT COURT
U. S. Dist. Court
S. D. of N. Y.

27

OCT 9 - 1975

A 1014

A 1015

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
57 id
OCT 17 1975

OCT 17 1975

P 1016

/ COULD WE HAVE THE EXHIBIT #'S OF COUNTS 2-28, 29-40, AND 41-51.

Felix Vegerilla

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
62 ind
OCT 18 1975

OCT 18 1975

A 1017
Re Court Exhibits
2-28

Exhibits

Court

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A 1018

Re Counts Exh. 62
Exhibit 62
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31 13 p 2

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34 255, 271, 272 p 12

35 [illegible]

36- 49 [illegible]

37 378 371 259 [illegible]

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A 1019

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USA 33s - 475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

3J Id.

A 1020

MEMBER OF
[redacted]
CERTIFIED PUBLIC ACCOUNTANTS

W. WAYNE BARNETT
CERTIFIED PUBLIC ACCOUNTANT
P. O. BOX 667
ABILENE, TEXAS

March 28,1970

Board of Directors
Select Enterprises, Inc.
Patio Building
Midland, Texas

I have examined the balance sheet of Select Enterprises, Inc., a Nevada Corporation, at March 5,1970, and the related income statement and retained earnings for the period beginning with the reorganization on January 13,1970, and ending March 5,1970. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as I considered necessary in the circumstances.

In my opinion the aforementioned financial statements present fairly the financial position of Select Enterprises, Inc. at March 5, 1970 and the result of their operations for the period stated above, in conformity with generally accepted accounting principles.

W. Wayne Barnett

A 1021

SELECT ENTERPRISES, INC.

A NEVADA CORPORATION

Balance Sheet

As Of March 5,1970

ASSETS:

CURRENT ASSETS:			
Accounts receivable			$1,834.20
LONG TERM ASSETS:			
Mineral Royalty Contract *		$50,000.00	
Equipment	$75,433.79		
Less: accumulated depreciation	25,755.08	49,678.71	
Buildings **	$379,593.00		
Less: accumulated depreciation	$249,701.61	$129,891.39	
Land		$25,404,500.00	
Mineral Discovery Value ***		$23,561,257.00	$49,195,327.10
TOTAL ASSETS			$49,197,161.30

LIABILITIES AND STOCKHOLDERS EQUITIES

Liabilities:		
Accounts Payable		$650.00
Stockholders Equities:		
Capitol Stock:		
Common Stock (10,000,000 shares authorized, 2,329,937 shares issued and outstanding, 10¢ par value)	$232,993.70	
Premium on common stock	$25,517,194.19	
Total	$25,750,187.89	
Earned Deficit	114,933.59	
Net paid in capitol	$25,635,254.30	
Discovery Surplus	$23,561,257.00	
Total Stockholders equities		$49,196,511.30
Total Liabilities and Stockholders Equities		$49,197,161.30

The accompanying notes and accountant's opinion are integral parts of these statements

A 1022

SELECT ENTERPRISES, INC.

A NEVADA CORPORATION

Statement of Income and Expenses

From January 13,1970 through March 5,1970

Revenue:		
Income from Rents		$1,834.20
Operating Expenses:		
Rent Expense	$650.00	
Depreciation Expense	457.49	
Total Expenses		$1,107.49
Net Income Before provisions for Federal Income Tax		$726.71

The accompanying notes and accountant's opinion are integral parts of these statements.

SELECT ENTERPRISES, INC.

A NEVADA CORPORATION

Statement of Earned Deficit

As Of March 5,1970

Earned Deficit		$115,660.30
Less:	Net income before provision for Federal Income Tax	$726.71
Earned Deficit		$114,933.59

The accompanying notes and accountant's opinion are integral parts of these statements.

* NOTE: Mineral royalty contract International soil Conservation Corporation on 200,000 tons of sulphur at 25 cents per ton is on a when and if produced basis.

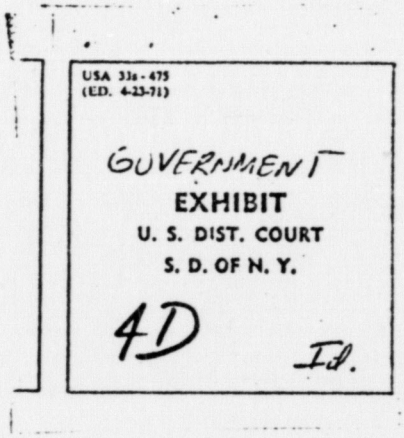
** NOTE: Estimated cost of concrete and steel constructed building in 1953-54 was $160,000.00 and now 70% depreciated. This building is located on the mining properties and has not been appraised by a recognized appraiser, but was considered by the Board of Directors in determining the acquisition price.

*** NOTE: Lands and the office building values were confirmed by independent appraisers who were members of the National Association of Independent Fee Appraisers.

**** NOTE: Mineral discovery values were confirmed by evaluations of Mr. George D. Harris, a geologist and Mr. Joe Brown, an independent oil and gas consultant.

GENERAL NOTE: Operation of the oil and gas property has begun now, but no pipeline connection was available at the time of the audit. The mining property is being prepared for operations but expenditures by Select Enterprises, Inc. had not taken place at the time of the balance sheet. The revenue from the office building is after the deductions of expenses of operations and management fees payable to Select Enterprises, Inc. on a quarterly basis.

There is a contingent liability in the amount of $135,271.50 to American General Investment Corporation for the office building which was acquired by deed, but under the contract of sale paragraph IV to be paid and a release to the first mortgage secured by the seller.


USA 33s-475
(ED. 4-23-71)
GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
4D
Id.

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NEWS RELEASE

SELECT ENTERPRISES, INC.

PATIO BUILDING 308 NORTH COLORADO MIDLAND, TEXAS PHONE: AC 915 683-5561

2717 ONE MAIN PLACE DALLAS, TEXAS 75250 PHONE: AC 214 742-1058

March 28, 1970

To: The Stockholders of Select Enterprises, Inc.

From: The Officers and Board of Directors of Select Enterprises, Inc.

Subject: Initial Stockholders News Release

The time has come for you as a stockholder in Select Enterprises, Inc. to begin to share in some of the excitement and enthusiasm as well as the feeling of confidence and solidarity that has been generated in the minds and hearts of your Board of Directors over these past few weeks of intensive organizational activity. This feeling radiates to all who have been in a position of being able to view fully and first hand the progress made in so short a time. For this reason, this letter is being sent to all of you that you may be made an integral part of the progress, and feel as we your officers and Board of Directors do, that Select Enterprises, Inc. has truly...SET THE PATTERN FOR PERPETUAL PROGRESS!

As a stockholder, you can confidently take assurance in the fact that Select Enterprises has faced the tests of sound business and economic thought and has not been found wanting.

Select Enterprises began its program of aquisition of properties by laying down first a firm, workable, yet simple series of criteria by which to judge each potential property prior to any further consideration. First, the property should be fully debt free... second, it should be currently producing substantial income, or possess inherent tangible value... and third, it must have an attractive potential for future growth under sound management and adequate financial. These criteria, more particularly the first, were felt necessary in today's economy, since it seemed far more in the interest of the stockholders to insist upon a debt free status, and reflect the earnings to the stockholders than to be paying out profits in the form of today's high interest rates..

Among those select enterprises which have met and passed this test are such holdings as producing Mica mines in New Mexico... Producing Oil and Gas properties in Comanche County Texas... Commercial and Residential Development properties in Midland, Texas... and Agricultural properties in the famed Imperial Valley of California.

In addition, numerous other potentially valuable aquisitions are in varying stages of consideration for participation in the rapidly growing family of

select enterprises, such as...Ranch Lands...Real Properties...Manufacturing Interests...Resort Properties...a Fort Worth-Dallas based Management Consulting Firm...and many more holdings of highly diverse nature.

All of this has accrued to the current Select Enterprises financial statement showing some $40,000,000.00 in assets, and no liabilities. Of course, only those properties actually a part of Select's family at this writing are reflected in the above statement.

The Mica mines in New Mexico have been fully owned by SEI for some time, and are now actually producing substantial commercial quantities of this valuable mineral. In recent weeks improvements have been made at the mine site. Additions have been made to the processing facilities, and several more valuable pieces of equipment have been added to further enhance the productivity of this property.

The Oil and Gas holdings located in Comanche County Texas are likewise enjoying current productive status. One well is being pumped successfully at this time and preparations are underway for drilling of 23 more. The field itself is well established geologically as a sound area for this project. Reputable geologists have studied this field and their reports indicate that this particular holding is of great potential for the near future as well as on a long range forecast basis.

Located in the west Texas city of Midland, Select Enterprises has acquired substantial holdings in both commercial and residential properties. Some of this property is developed, and some is in varying degrees of development. Architectural firms have completed preliminary plans for total development and the vision of the future for this enterprise is most encouraging.

One of the more recent aquisitions brings to Select Enterprises a truly great potential. This exciting event is the securing of approximately 93,000 acres of land located in the well-known Imperial Valley of California. The Imperial Valley has been considered among the richest and most productive land anywhere in the world. Careful development of this holding can generate a large potential profit to Select Enterprises and its stockholders, and can also prove to be of great benefit to the Imperial Valley and its surrounding ancillary enterprises.

One of the more potentially profitable of the enterprises under consideration for aquisition is a Dallas-Fort Worth based firm known as Economic Management Services, Inc. This firm is currently engaged in management consulting for professional people through training Seminars, and through individual consulting contracts. A recent field test indicates that this firm is capable of generating a cash flow conservatively in excess of one quarter million dollars in the next two years with an extremely modest expenditure. They have currently scheduled seminars in many states including Oklahoma, Texas, Indiana, Minnesota, California, Montana, and others.

Offices of Select Enterprises, Inc. which is a Nevada Corporation are

located in Midland, Texas, and in Dallas, Texas.

The Midland office which is currently the headquarters of the corporation is housed in the Patio Building. This building is owned by Select Enterprises. It is considered a most valuable asset, and is located in the heart of Midland's business district which in turn in considered the center of West Texas.

The Dallas office is located in the new "One Main Place" complex in downtown Dallas, hub of the southwest's financial world.

Plans are now under way to switch the headquarters of Select Enterprises to the Dallas office in order to expidite the financial and developmental aspects of the future growth of SEI.

With the foregoing in mind, we the Officers and Board of Directors of SEI feel that you will readily recognize the outstanding possibilities and potential existing through the vigorous and enthusiastic management policies of this unique organization.

Subsequent releases such as this will be prepared for you the stockholder in Select Enterprises, Inc. periodically each 30 to 45 days in order to keep you abreast of the rapid-fire progress of this progressive, and agressive corporation.

Sincerely yours for the Officers and Board of Directors,

M. S. Knisely, President
Select Enterprises, Inc.

Crown Securities
John Wells, New York City
212, 349-7210 disconnected

[illegible] Securities, Kansas City
Jack Reed 816, 221-2726

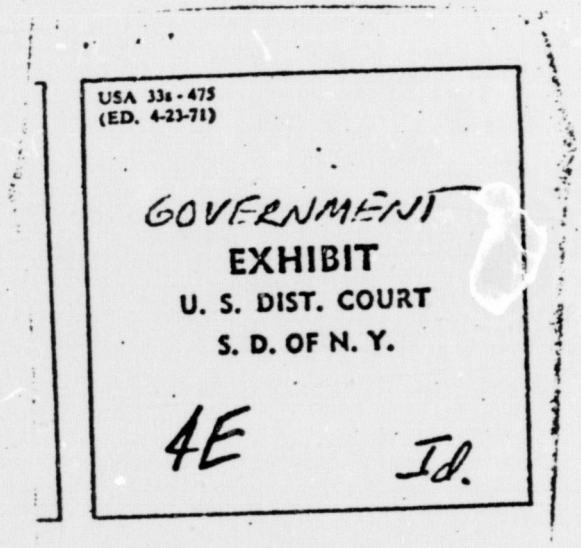
Enterprise Investments
Mel Richards, Las Vegas
702, 382-7030

Dalen Investments
Dale Regent, Miami
305, 358-2511

St Louis Securities
St. Louis

A 1029

A 1030


USA 33s - 475
(ED. 4-23-71)
GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
4E
Id.

SELECT ENTERPRISES, INC.

PATIO BUILDING 308 NORTH COLORADO MIDLAND, TEXAS PHONE: AC 915 683-6561

2717 ONE MAIN PLACE DALLAS, TEXAS 75250 PHONE: AC 214 742-1058

A 1031

NEWS RELEASE

March 28,1970

To: The Stockholders of Select Enterprises, Inc.

From: The Officers and Board of Directors of Select Enterprises, Inc.

Subject: Initial Stockholders News Release

The time has come for you as a stockholder in Select Enterprises, Inc. to begin to share in some of the excitement and enthusiasm as well as the feeling of confidence and solidarity that has been generated in the minds and hearts of your Board of Directors over these past few weeks of intensive organizational activity. This feeling radiates to all who have been in a position of being able to view fully and first hand the progress made in so short a time. For this reason, this letter is being sent to all of you that you may be made an integral part of the progress, and feel as we your officers and Board of Directors do, that Select Enterprises, Inc. has truly...SET THE PATTERN FOR PERPETUAL PROGRESS!

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Among those select enterprises which have met and passed this test are such holdings as producing Mica mines in New Mexico... Producing Oil and Gas properties in Comanche County Texas... Commercial and Residential Development properties in Midland, Texas...and Agricultural properties in the famed Imperial Valley of California.

In addition, numerous other potentially valuable aquisitions are in varying stages of consideration for participation in the rapidly growing family of

select enterprises, such as... Ranch Lands... Hotel Properties... Manufacturing Interests... Resort Properties... a Fort Worth-Dallas based Management Consulting Firm... and many more holdings of highly diverse nature.

All of this has accrued to the current Select Enterprises financial statement showing some $49,000,000.00 in assets, and no liabilities. Of course, only those properties actually a part of Select's family at this writing are reflected in the above statement.

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The Oil and Gas holdings located in Comanche County Texas are likewise enjoying current productive status. One well is being pumped successfully at this time and preparations are underway for drilling of 23 more. The field itself is well established geologically as a sound area for this project. Reputable geologists have studied this field and their reports indicate that this particular holding is of great potential for the near future as well as on a long range forecast basis.

Located in the west Texas city of Midland, Select Enterprises has acquired substantial holdings in both commercial and residential properties. Some of this property is developed, and some is in varying degrees of development. Architectural firms have completed preliminary plans for total development and the vision of the future for this enterprise is most encouraging.

One of the more recent aquisitions brings to Select Enterprises a truly great potential. This exciting event is the securing of approximately 93,000 acres of land located in the well-known Imperial Valley of California. The Imperial Valley has been considered among the richest and most productive land anywhere in the world. Careful development of this holding can generate a large potential profit to Select Enterprises and its stockholders, and can also prove to be of great benefit to the Imperial Valley and its surrounding ancillary enterprises.

One of the more potentially profitable of the enterprises under consideration for aquisition is a Dallas-Fort Worth based firm known as Economic Management Services, Inc. This firm is currently engaged in management consulting for professional people through training Seminars, and through individual consulting contracts. A recent field test indicates that this firm is capable of generating a cash flow conservatively in excess of one quarter million dollars in the next two years with an extremely modest expenditure. They have currently scheduled seminars in many states including Oklahoma, Texas, Indiana, Minnesota, California, Montana, and others.

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Subsequent releases such as this will be prepared for you the stockholder in Select Enterprises, Inc. periodically each 30 to 45 days in order to keep you abreast of the rapid-fire progress of this progressive, and agressive corporation.

Sincerely yours for the Officers and Board of Directors,

M. S. Knisely, President
Select Enterprises, Inc.

OFFICERS

President
M. S. KNISELY
MIDLAND, TEXAS
M. S. Knisely brings to Select Enterprises, Inc. many years of experience and wise judgement based upon his background as a well known West Texas business and professional man. He has contributed a great deal to the early development of Select, and will continue to exercise his valuable talents toward further development of Select's Pattern for Progress.

Vice President
R. B. "PARKER" GOODLOE
LAMADERA, NEW MEXICO
Mr. Goodloe, has for many years established prominence in the fields of Mining, Manufacturing and Milling. He has developed authority in these fields, as well as the fields of land fertilizers and cattle feed. In his administrative duties with Select Enterprises, Inc., he is daily demonstrating the value of the broad base of his past experience.

Secretary-Treasurer
H. T. HANSON
BIG SPRING, TEXAS
Also a well established West Texas Business and Professional man, H. T. Hanson is providing Select Enterprises, Inc., with a wealth of sound mature administrative judgment. He brings to Select a wealth of enthusiasm and progressive vision coupled with this sound judgment.

CONSULTANTS

MYRON O. BICKEL, L.L.B.
DALLAS, TEXAS
Mr. Bickel, well known authority in the fields of Insurance Administration, Banking and Trust Funds, as well as Insurance, Pension and Tax Planning, forms another vital factor in the Management team of Select Enterprises, Inc.

WILLIAM C. CHAPEL
FORT WORTH, TEXAS
A founder of Economic Management Services, Inc. of Fort Worth, W. C. Chapel is becoming more and more an influence in management of Select Enterprises, Inc., through his nearly twenty years of experience in the fields of Management Consulting, Sales Management, Business Administration and related fields, and brings invaluable ability to the Select . . . "Pattern for Progress."

Select Enterprises Inc.

One Main Place Dallas, Texas 75250

A 1034

Select Enterprises Inc.

GOVERNMENT EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
5
Id.

USA 336-675 (I.D. 4-23-71)

BIRTH OF AN IDEA

Some time ago, a group of men of vision, knowledge and experience, set about to form a business enterprise with the primary thoughts of stability . . . production . . . and progress foremost in their minds. A pattern was formulated to achieve success for the greatest number of people, in the shortest possible period of time, and to assure perpetual progress.

With this worthy goal in mind they set out to first achieve corporate status, then acquire worthwhile holding of diversified nature. Three criteria were set down to guard this basic philosophy. 1. All acquisitions should be debt free. 2. They should be currently producing income, or have good potential for future growth. 3. They should show an attractive potential for future expansion and success.

Each of the basic criteria, and more particularly the first were felt necessary in today's fast moving economy, since it seemed far more in the interest of stockholders of the parent company to apply each of these yardsticks, and reflect the results in earnings to stockholders, than to waste profits in the form of today's high interest rates, spend huge sums on development of cash flow, or to risk funds on doubtful future growth.

In the relatively short time since this plan has been in operation, there have been many signs of the basic truth resting in this sound business and success philosophy.

THE DEVELOPMENT OF AN IDEA

Applying the basic philosophy of Select Enterprises, Inc., its management began the search for properties which adhered to the necessary criteria.

No small task in itself, this search has shown progress.

Select Enterprises, Inc. now owns several assets in various fields which total a financial status of more than $49,000,000.00 in assets with virtually no liabilities. This is a picture rarely seen in business today.

First, Select Enterprises, Inc. acquired Mica mines in the mountains of New Mexico. The history of these mines dates back for many years, and reads a little like the history of the great Southwest. They have been productive for many years, and geological surveys indicate that they still contain one of the major deposits located anywhere. This, along with the fact that the demand for Mica is on the increase indicates this to be a most valuable property.

Second, Select Enterprises, Inc. acquired Oil and Gas properties in Comanche County, Texas. There is currently one well in production there, with plans under way for the drilling of 23 additional wells. Geological reports on this field indicate a vast future potential.

Next, Select Enterprises, Inc. acquired substantial commercial and residential properties in the West Texas city of Midland. This property, some of which is already developed, includes an excellently located office building, and is without doubt a great asset to the Company. Architectural firms have completed preliminary plans for total development of this property and the outlook for the near future holds a great deal of promise.

Recently, Select Enterprises, Inc. acquired some 93,000 acres of land located in the rich, fertile Imperial Valley area of California. This property shows great promise for development into irrigated farming land, as well as commercial development, being located along one of the major highways in the area.

In addition to those properties already secured by Select Enterprises, Inc., there are many more which are presently being studied and subjected to the tests of "Select's" acquisition criteria. Among them are such properties as Ranch Lands . . . Hotel properties . . . Manufacturing interests . . . Resort properties . . . and many more of highly diversified nature.

One of the more potentially profitable acquisitions under consideration is the Dallas-Fort Worth based firm known as Economic Management Services, Inc. This firm is engaged in Management consulting for the professions, and is capable of generating substantial profit.

THE RESULTS OF AN IDEA

The financial statement of Select Enterprises, Inc. dated March 5, 1970, and prepared from audit by a Certified Public Accountant shows assets of $49,197,161.30 and liabilities of just $650, which reflects equities to the present stockholders of $49,196,511.30 with just over one-fifth of the total authorized shares of stock issued and outstanding.

A 1035

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Select Enterprises Inc.

One Main Place Dallas, Texas 75250

A 1036

Select Enterprises Inc.

. . . Sets

GOVERNMENT EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
SA

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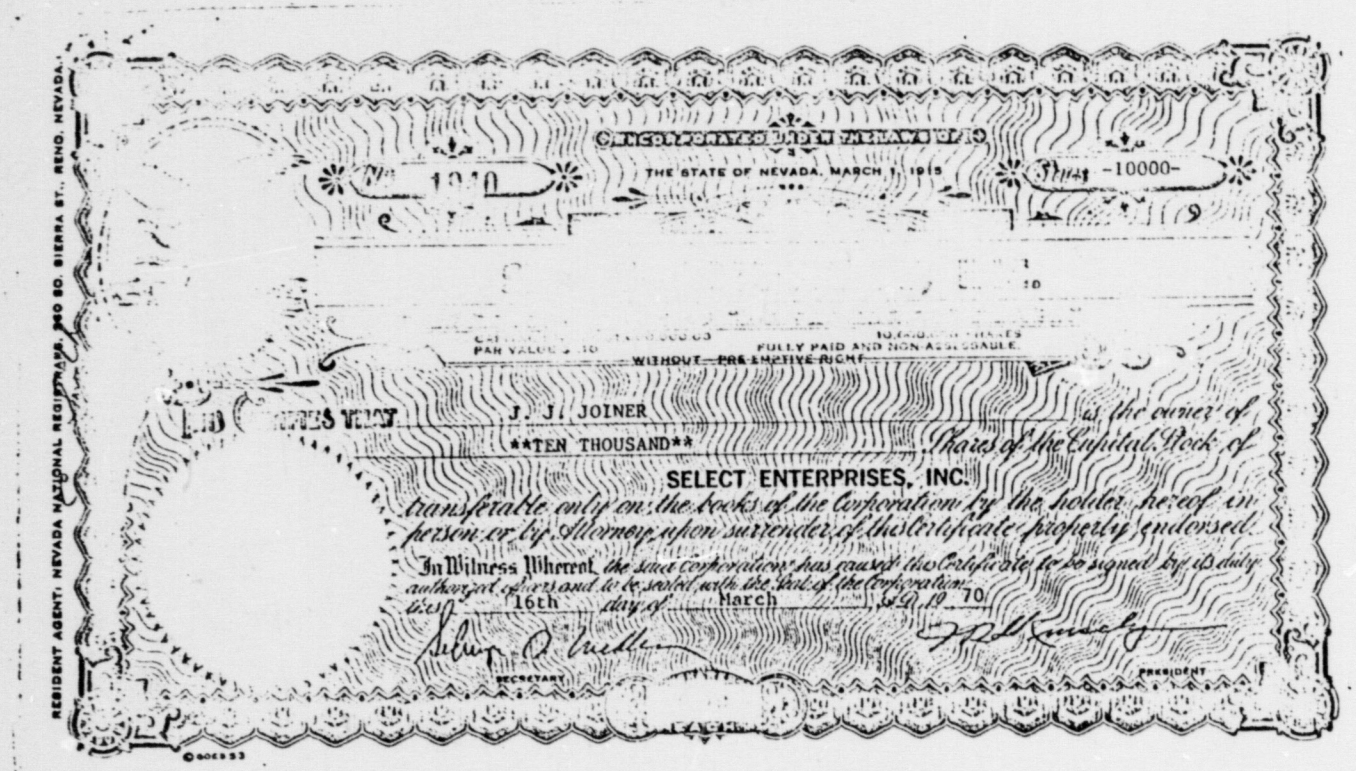
A 1038


INCORPORATED UNDER THE LAWS OF THE STATE OF NEVADA, MARCH 1, 1915

No. 1010 -10000-

PAR VALUE $ .10 WITHOUT PREEMPTIVE RIGHT FULLY PAID AND NON ASSESSABLE

THIS CERTIFIES THAT J. J. JOINER is the owner of

TEN THOUSAND shares of the Capital Stock of

SELECT ENTERPRISES, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 16th day of March A.D. 19 70

SECRETARY PRESIDENT

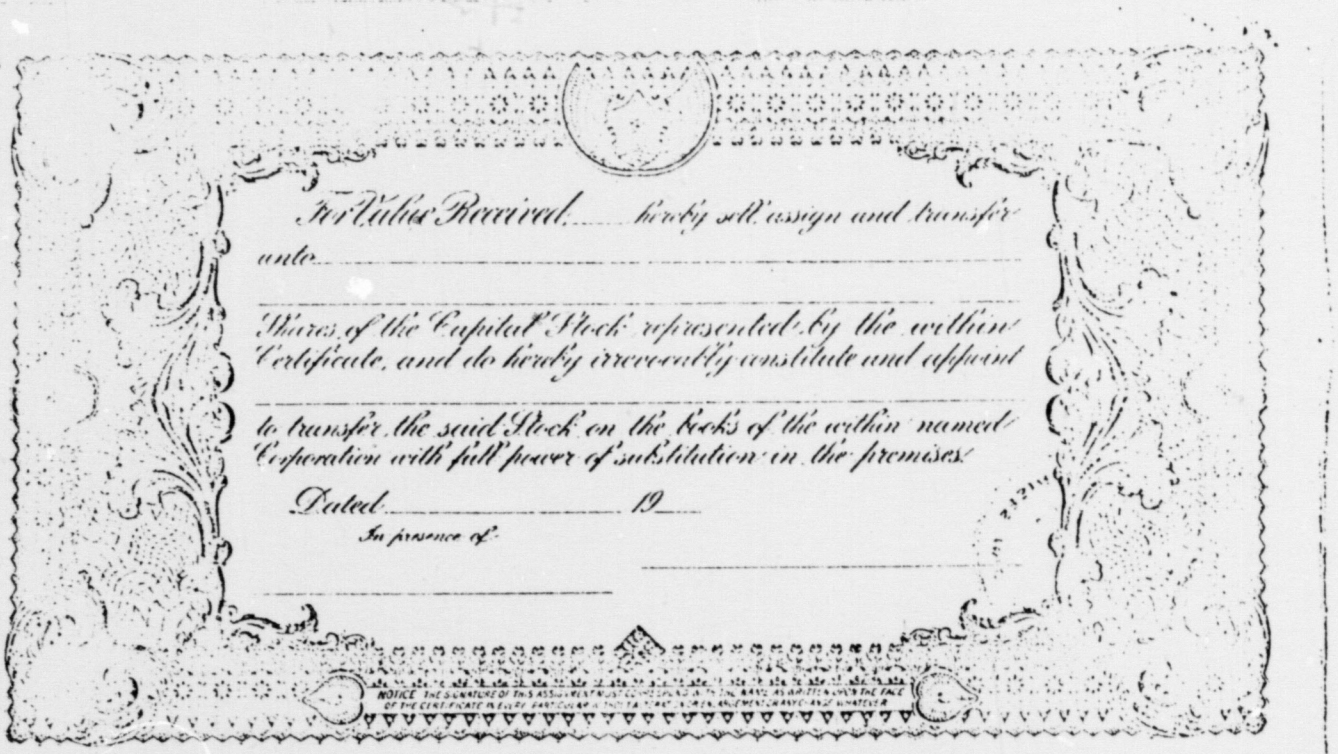
RESIDENT AGENT: NEVADA NATIONAL REGISTRARS, 240 SO. SIERRA ST., RENO, NEVADA

©60CC 53

USA 33s - 475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

105 I.I.


For Value Received hereby sell assign and transfer
unto
Shares of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises
Dated 19
In presence of

A 1039

A 1040

USA 335-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

106 Id.

ASSIGNMENT SEPARATE FROM CERTIFICATE

For Value Received, I

hereby sell, assign and transfer unto ~~The Home State Bank, McPherson, Kansas,~~

(~~10000~~) Shares of the

Capital Stock of the Select Enterprises, Inc.

standing in name on the books of said

represented by Certificate No. herewith

and do hereby irrevocably constitute and appoint

attorney to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated

IN PRESENCE OF

Ernest R. Mullens

Signature guaranteed

Ernest R. Mullens

Signature guaranteed by The Home State Bank, McPherson, Kansas
By Richard B. Meinke (Pres.)

A 1041

USA 33s-475
(Ed. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
107 I.

STOCK ASSIGNMENT

For Value Received, I, we, or either of us, the undersigned J. J. Joiner

hereby sell, assign and transfer unto Ernest R. Mullenax

(-10000-) Shares of the

Capital Stock of the Select Enterprises, Inc.

standing in my/our name on the books of said Corporation

represented by Certificate No. 1940 herewith, and hereby irrevocably constitute and

appoint my/our attorney

to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated 5-7 19 70

J. J. Joiner
SIGNATURE OF REGISTERED OWNER OF STOCK

Guarantee of signature by
a bank official or registered
securities dealer:

Signature Guaranteed
Exchange Bank & Trust Co.
Dallas, Texas

By Lyon Edwards
ASSISTANT VICE PRESIDENT

Exh 122

A 1142

TRANSFER AGENT IS

ROCKY MOUNTAIN SECURITIES
TRANSFER CO., INC.
1016 BANK OF NEW MEXICO BLDG.
ALBUQUERQUE, N.M.

109

A.1043

CONTINENTAL GENERAL Corporation

Suite 200, Building No. 2, Office Park Circle
Birmingham, Alabama 35223

MAY 1-1970
Personal: E. R. Mullenax

L I A B I L I T I E S

Notes secured by stocks	$ 232,000.00
Mooney Executive aircraft (bought new Jan.1, '69)	30,000.00
Home in Wichita	45,000.00
Total liabilities	$ 307,000.00

S T O C K S

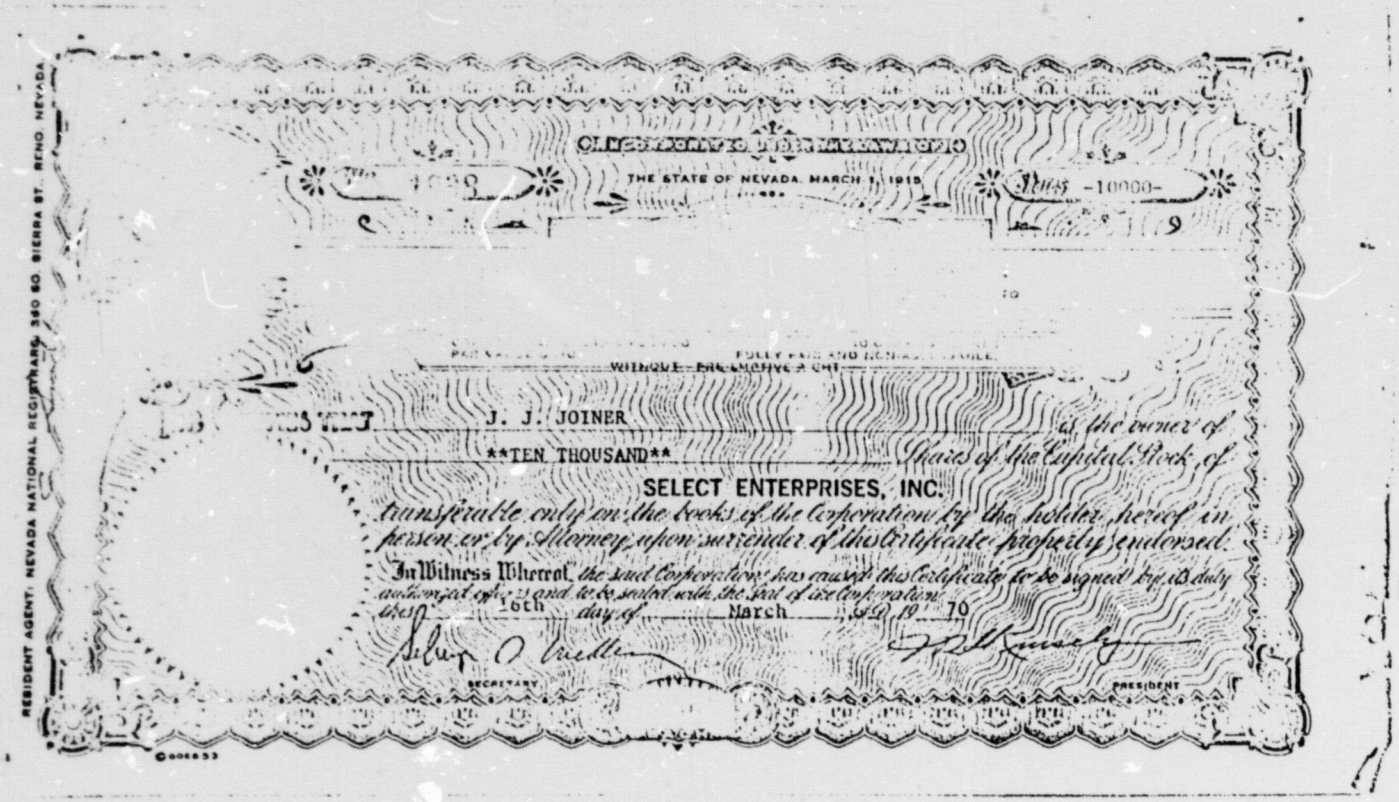
American Investors Life Insurance	$ 30,000.00	$10.00
Modern American Life Insurance	7,200.00	$12.00
Select Enterprises, Inc.	480,000.00	$12.00
Founders of American Investment	22,400.00	$ 4.00
Midwest National Life	384.00	$ 4.00
Joint Talent Group, Inc.	50,000.00	$ 2.
Continental General Corporation	285,000.00	$ 2.
Continental General Life	1,402.00	$ 2.
Diversified Products Corporation	126,000.00	$ 3.
Golden Era Investment Corporation	255,000.00	$ 2.
Diversified Enterprises of America, Inc.	51,000.00	$ 1.
Total Stock Value	$1,308,386.00	

A S S E T S

Cash on hand & in banks	$ 15,000.00
Due from business associates & friends	24,000.00
Due for services (commissions, salaries, etc.)	135,000.00
Home & office furnishings & equipment	21,000.00
Real estate	90,000.00
Aircraft	20,000.00
Total General Assets	$ 305,000.00
Total stock values	$1,308,386.00
Total assets	$1,613,386.00
Less Total liabilities	$ 307,000.00
Net worth this date	$1,306,386.00

Signed: Ernest R. Mullenax
Ernest R. Mullenax

Primary bank reference - Union National Bank
Union Center Bldg.
Wichita, Kansas
F. M. Riffey - Vice President



INCORPORATED UNDER THE LAWS OF THE STATE OF NEVADA, MARCH 1, 1915 — Shares -10000-

RESIDENT AGENT, NEVADA NATIONAL REGISTRARS, 350 SO. SIERRA ST., RENO, NEVADA

FULLY PAID AND NON-ASSESSABLE

WITHOUT PREEMPTIVE RIGHT

This Certifies that J. J. JOINER is the owner of **TEN THOUSAND** Shares of the Capital Stock of

SELECT ENTERPRISES, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 16th day of March A.D. 19 70

SECRETARY — PRESIDENT

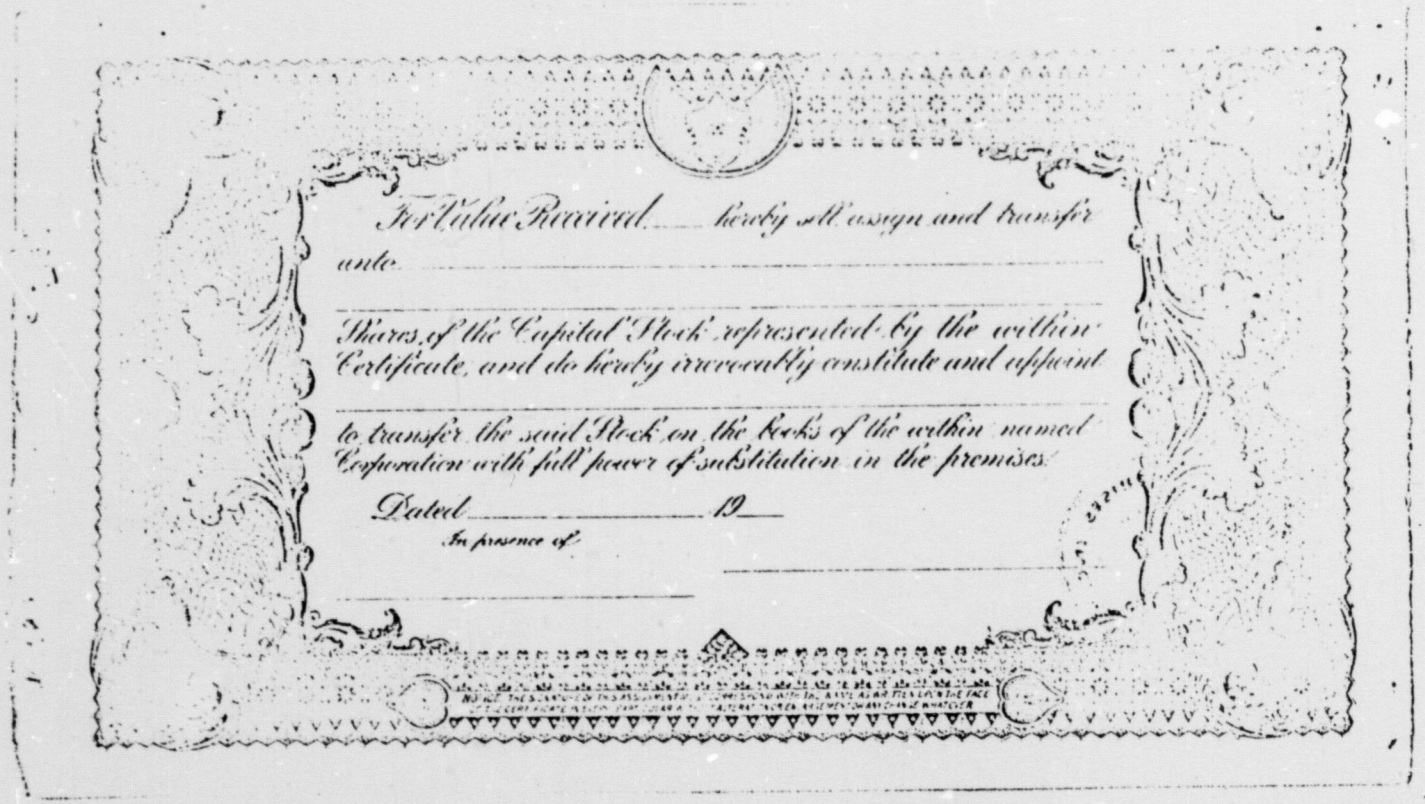
Goodes 53

P 1074

USA 33s - 475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

110 Id.



For Value Received _____ hereby sell assign and transfer unto _____

_____

_____ Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

_____ to transfer the said Stock on the Books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____ _____

_____

A 1045

A 1046

USA 338-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

111 IJJ.

STOCK ASSIGNMENT

For Value Received, I, we, or either of us, the undersigned I, J. J. Joiner

hereby sell, assign and transfer unto Ernest R. Mullenax

(10,000) Shares of the

Capital Stock of the Select Enterprises, Inc.

standing in my/our name on the books of said Corporation

represented by Certificate No. 1938 herewith, and hereby irrevocably constitute and

appoint my/our attorney

to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated 5-7 19 70

J. J. Joiner
SIGNATURE OF REGISTERED OWNER OF STOCK

Guarantee of signature by
a bank official or registered
securities dealer:

Signature Guaranteed
Exchange Bank & Trust Co.
Dallas, Texas

By Ben Edwards
ASSISTANT VICE PRESIDENT

Exh 122

USA 316-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

112 I.I.

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

For Value Received I, Ernest R. Mullenax

hereby sell, assign and transfer unto Town and Country Business Trust

(2,000) Shares of the

Capital Stock of the Select Enterprises, Inc.

standing in my name on the books of said Corporation

represented by Certificate No. 1938 herewith

and do hereby irrevocably constitute and appoint

attorney to transfer the said stock on the books of the within named

Company with full power of substitution in the premises.

Dated July 1, 1970

Ernest R Mullenax
Ernest R. Mullenax

IN PRESENCE OF

Helen M. Lee

A 1048

ASSIGNMENT—General Form

KNOW ALL MEN BY THESE PRESENTS, That I the undersigned, for value received, do hereby GRANT, ASSIGN, TRANSFER AND CONVEY unto

Town and Country Business Trust

its heirs and assigns

20,000 shares Pig N'Whistle Holding Corporation Stock, Cert. #1086.

20,000 shares Pic N'Whistle Holding Corporation Stock, Cert. #1087

2,000 shares Select Enterprises, Inc. Stock Cert. #1938

TO HAVE AND TO HOLD THE SAME, FOREVER, hereby appointing and constituting said assignee my true and lawful attorney in my name, place and stead for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover and receive all such sum and sums of money, which are now, or may hereafter become owing and payable for or on account of all or any of the accounts, dues, debts, demands, judgments, rights, credits and choses, above assigned, giving and granting unto the said attorney full power to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes as I might and could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 1st day of July, 19 70

WITNESS:

Helen N. Fell

Ernest R. Mullenax

Ernest R. Mullenax

A 1049

No.

ASSIGNMENT

GENERAL FORM

FROM

TO

State of Kansas, _____ County, ss:

BE IT REMEMBERED, That on this _____ day of _____ A.D., 19____, before me, the undersigned, a _____ in and for the County and State aforesaid, came _____, _____, _____, who _____ personally known to me to be the same person ____ who executed the within instrument of writing, and such person _____ duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my _____ seal, the day and year last above written.

_____

Commission expires _____, 19____

USA 336-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

113

A 1050

July 1, 1970

Town and Country Business Trust
4003 East Kellogg
Wichita, Kansas

Re: $25,000 loan

Gentlemen:

In assigning two thousand shares of Select Enterprises, Inc., to you, out of Certificate No. 1938 which embodies 10,000 shares of Select Enterprise, I understand that there will be two certificates issued: one for 2,000 shares and one for 8,000 shares; and that the number on the new certificates will be different.

This is your authority to insert the correct number on the 2,000-shares certificate in my noteand assignment to you.

Ernest R. Mullenax

ERNEST R. MULLENAX
2532 N. Dellrose
Wichita, Kansas 67220

USA 33a-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

114 ID.

A 1051

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

STATEMENT OF PURPOSE OF THE PROCEEDS OF A STOCK-SECURED EXTENSION OF CREDIT BY A BANK. (FEDERAL RESERVE FORM U-1)

A FALSE OR DISHONEST STATEMENT BY THE CUSTOMER OR THE OFFICER OF THE BANK ON THIS FORM MAY BE PUNISHABLE BY FINE OR IMPRISONMENT (U.S. CODE, TITLE 15, SECTION 78ff, AND TITLE 18, SECTION 1001).

Please print or type (if space is inadequate attach separate sheet).

I (We), ~~I, Ernest R. Mullenax~~ (name(s)), have applied for an extension of credit from

Town and Country Business Trust (~~xxxxxxxxx~~) in the amount of $25,000.00 secured in whole or in part by stock as follows:

Part I. Stock Collateral

Stock (list separately by issue)	Number of shares	Source of valuation	Market value (in $)	TO BE COMPLETED BY THE BANK: Source of valuation	TO BE COMPLETED BY THE BANK: Market value (in $)

Part II. Other Collateral

List collateral (Itemize where 10 per cent or more)	Source of valuation	Market value (in $)	Source of valuation	Market value (in $)	Good faith loan value (in $)
		Total: $		Total: $	Total: $

Maximum loan value under Regulation U $ ____ Total: $ ____

Total amount of credit granted $ 25,000.00

A 1052

Part III.

1. The proceeds of this credit are to be used for Operating Expense
(describe in detail)

2. I (we) have owned the stock collateral securing this credit continuously for (check one)

☐ six months or more ☐ less than six months.

I (WE) HAVE READ THIS FORM AND HEREBY CERTIFY AND AFFIRM THAT TO THE BEST OF MY (OUR) KNOWLEDGE AND BELIEF THE STATEMENTS REQUIRED OF ME (US) ARE TRUE, ACCURATE, AND COMPLETE.

Manual signature of customer (s):

DATE July 1, 1970 (SIGNED) Ernest R. Mueller

Ernest R. Mueller
(Print name of each signature)

2532 North Dellrose
(Street address)

Wichita, Kansas 67220
(City, state)

Part IV.

TO BE COMPLETED BY BANK

1. State amount of any other credit extended to the customer(s) (a) secured in whole or in part, directly or indirectly, by any portion of collateral listed in Parts I and II: $_____ and (b) unsecured credit in excess of $5,000 in the aggregate $_____

2. Is the collateral listed in Part I to be delivered or has the collateral been delivered from a bank, broker, dealer, or a person other than the customer? _____. Against payment? No

I HAVE SUPPLIED THE INFORMATION REQUIRED OF THE BANK AND ACCEPT THE CUSTOMER'S STATEMENT ON THIS FORM IN GOOD FAITH AS DEFINED BELOW.* I AM FAMILIAR WITH THE PROVISIONS OF REGULATION U.

DATE July 1, 1970 (SIGNED) _____

Paul Mann, Chairman of the Board
(Print name and title of signing officer under signature)

Town and Country Business Trust
(Name of bank)

* Regulation U requires that the customer's statement on this form be accepted by an officer of the bank acting in good faith. Good faith requires that such officer (1) must be alert to the circumstances surrounding the credit, and (2) if he has any information which would cause a prudent man not to accept the statement without inquiry, has investigated and is satisfied that the statement is truthful.

This form must be retained by the bank for at least six years after the termination of the credit.

USM 325-475
(Ed. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

115 Id.

A 1053

2435

FORM 1002 KANSAS–REV.

COLLATERAL NOTE

July 1, 19 70 $ 25,000.00

6 months (January 1, 1971) after date the undersigned (jointly and severally if more than one) promises to pay to the order of Town and Country Business Trust, Wichita, Kansas at its offices, the sum of Twenty five thousand and no/100 - - - - - - - - - - - - - - - - Dollars in one installments of $ 25,000.00 each, then ---installments of $----- each, the first installment due January 1, 1971, plus date interest @ 10% 19____, the remaining installments to become due and payable as follows:

having deposited with said bank, as collateral for payment of this and any and all other liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter called "Obligations") of the undersigned, to said Bank, its successors or assigns, the following property viz:

Assignment 40,000 shares Pig'N Whistle Holding Corporation Stock, Cert. #1086 and 1087
Assitgnment 2,000 shares Select Enterprises, Inc. Stock, Cert. #1938

The undersigned agrees to deliver to the holder additional collateral should the holder deem itself insecure.

At the option of the holder, all Obligations shall become immediately due and payable without notice or demand upon the occurrence of any of the following events of default: (a) failure of the undersigned with or without demand or notice, to deliver additional security as above agreed; (b) default in the payment or performance of any liability or obligation of any of the undersigned, or of any maker, endorser or guarantor of any liability or obligation of any of the undersigned, to the holder; (c) failure to pay when due any premium on any life insurance policy held as collateral herefor; (d) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against, any maker, endorser, or guarantor hereof. A collection charge on each installment of principal or interest in default for a period of 10 days or more may be assessed as an additional charge against the borrower(s) in an amount not in excess of 5% of such installment or $2.50 whichever is less. Also, in any such event of default, the Bank shall have full power and authority at any time or times thereafter to exercise all or any one or more of the remedies and shall have all the rights of a secured party under the Uniform Commercial Code of Kansas. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the holder will give the undersigned reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition is to be made. The requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the undersigned at the address given below at least five (or whatever figure is deemed reasonable) days before the time of the sale or disposition.

Right is expressly granted to the holder at its option to transfer at any time to itself or to its nominee any securities pledged thereunder and to receive the income thereon and hold the same as security herefor, or apply it on the principal or interest due hereon or due on any liability secured hereby.

Any deposits or other sums at any time credited by or due from the holder to any maker, endorser or guarantor hereof and any securities or other property of any maker, endorser or guarantor hereof in the possession of the holder may at all times be held and treated as collateral security for the payment of the Obligations. The holder may apply or set off such deposits or other sums against said liabilities at any time in the case of makers, but only with respect to matured liabilities in the case of endorsers or guarantors.

The holder may at its option, whether or not this note is due, demand, sue for, collect, or make any compromise or settlement it deems desireble with reference to collateral held hereunder. The holder shall not be bound to take any steps necessary to preserve any rights in the collateral against prior parties, which the undersigned hereby assumes to do.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right and/or remedy on any future occasion.

Finance charge applies from July 1, 1970 (Date) This note may be paid at any time before maturity by payment of the unpaid balance less the unearned charges as of the date of payment. Rebate based on rule of 78's or_____

1. Proceeds	$ 25,000.00
2. Other Charges, Itemized	
_____	$_____
_____	$_____
_____	$_____
3. Amount Financed (1 & 2)	$_____
4. FINANCE CHARGE	$_____
5. Total of Payments	$_____

ANNUAL PERCENTAGE RATE 10.00 %

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by borrower through any person of his choice. If borrower desires property insurance to be obtained through the creditor, the cost will be $_____ for the term of the credit.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the borrower signs the appropriate statement below:

(a) The cost for Credit Life Insurance alone will be $_____ for the term of the credit.

(b) The cost for Credit Life and Disability Insurance will be $_____ for the term of the credit.

I desire Credit Life Insurance only.	I desire Credit Life and Disability Insurance.	I DO NOT want Credit Life or Disability Insurance.
7/1/70 (Date) E. R. M. (Signature)	____ (Date) _____ (Signature)	____ (Date) _____ (Signature)

Every maker, endorser and guarantor of this note, or the obligation represented hereby, waives presentment, demand, notice, protest, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this note, assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and/or to the addition or release of any other party or person primarily or secondarily liable.

The undersigned will pay on demand all costs of collection and attorney's fees, incurred or paid by the holder in enforcing this note on default.

As herein used the word "holder" shall mean the payee or other endorsee of this note, who is in possession of it, or the bearer hereof, if this note is at the time payable to the bearer.

The undersigned borrower acknowledges receipt of a copy of this note on the date hereof.

Address 2532 North Dellrose, Wichita, Kansas 67220

Signed Ernest R. Mullenax
Ernest R. Mullenax

A 1054

USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

116

TOWN AND COUNTRY BUSINESS TRUST
4004 EAST KELLOGG MU 5-1361
WICHITA, KANSAS 67218

372

1 6 1 4 2 3 5 July 2, 19 70 83-1471 / 1011

PAY Nine Hundred Dollars and No/100---------- DOLLARS $ 900.00

TO THE ORDER OF Ernest R. Mullenax

TOWN AND COUNTRY BUSINESS TRUST

Augusta STATE BANK
AUGUSTA, KANSAS

⑆101114715⑆ "0000090000"

TOWN AND COUNTRY BUSINESS TRUST
4004 EAST KELLOGG MU 5-1361
WICHITA, KANSAS 67218

367

July 1 19 70 83-1471 / 1011

PAY Twenty-Two Thousand One Hundred Dollars and No/100---------- DOLLARS $ 22,100.00

TO THE ORDER OF Ernest R. Mullenax

TOWN AND COUNTRY BUSINESS TRUST

Augusta STATE BANK
AUGUSTA, KANSAS

⑆101114715⑆ "0002210000"

USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

116 ID.

A 1055

Ernest A. Macleay

Ernest A. Macleay

USA 33-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
118 Id.

A 1056

July 6, 1970

Mr. Ernest R. Mullenax
2532 North Dellrose
Wichita, Kansas 67220

Dear Mr. Mullenax:

I am enclosing a check in the amount of $900.00, check #372. We were working so fast the other day that I made a $1,000 error in addition. We were short $100.00 on the credit life insurance premium, making a total of $250.00 for $25,000 credit life for six months. Therefore, it would leave $900.00 to your credit.

I was visiting with Helen Lee and I told her this was like Christmas in July. She was laughing and said that it didn't look like you got much out of the $25,000 but you will probably make a couple of million on this $25,000. Any way, I hope so.

It was nice to see you again and I trust that we will be able to work together in some areas that will be beneficial to both.

Sincerely,

Paul Hanna

Chairman
TOWN AND COUNTRY BUSINESS TRUST

P.S. Will you please sign and return the enclosed insurance application card? Thanks.

PH:sr
Encl.

USA 336-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

119 Ty.

A 1057

INSTRUCTIONS TO DELIVERING EMPLOYEE

☒ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee
(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.
660697

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
E R Mullens

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

455—16—71548-10 GPO

RECEIPT FOR CERTIFIED MAIL—30¢

No. 660697

SENT TO
MR ERNEST R MULLENAX

STREET AND NO.
2117 VESTRIDGE LANE

P. O., STATE, AND ZIP CODE
BIRMINGHAM, ALABAMA

POSTMARK OR DATE

EXTRA SERVICES FOR ADDITIONAL FEES

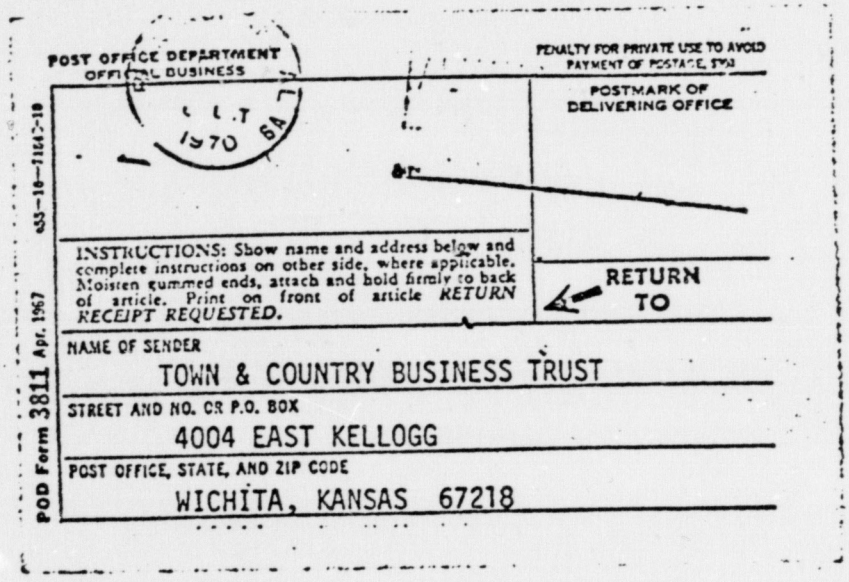
Return Receipt: Shows to whom and date delivered	Return Receipt: Shows to whom, date, and where delivered	Deliver to Addressee Only
☒ 10¢ fee	☐ 35¢ fee	☐ 50¢ fee

POD Form 3800 Mar. 1968

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL

(See other side)

A 1058



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and fold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER
TOWN & COUNTRY BUSINESS TRUST

STREET AND NO. OR P.O. BOX
4004 EAST KELLOGG

POST OFFICE, STATE, AND ZIP CODE
WICHITA, KANSAS 67218

POD Form 3811 Apr. 1967 *U.S.G.P.O. 1967 O-1161-18*

1. Stick postage stamps to your article to pay:
   BASIC CHARGES
   Certified fee—30¢
   Postage (first-class or airmail)

   OPTIONAL SERVICES
   Return receipt (10¢ or 35¢)
   Deliver to addressee only—50¢
   Special delivery
2. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, *leaving the receipt attached,* and present the article at a post office service window or hand it to your rural carrier. (*no extra charge*)
3. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, detach and retain the receipt, and mail the article.
4. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the back of the article by means of the gummed ends. Endorse front of article RETURN RECEIPT REQUESTED. (*Fees—10¢ or 35¢.*)
5. If you want the article delivered only to the addressee, endorse it on the front DELIVER TO ADDRESSEE ONLY. (*Fee—50¢*). Place the same endorsement in line 2 of the return receipt card.
6. Save this receipt and present it if you make inquiry.

* GPO : 1966 O—216-766

A 1059

TOWN & COUNTRY BUSINESS TRUST · 4004 E. KELLOGG · WICHITA, KANSAS 67218

2 October 1970

Mr. Ernest R. Mullenax
2117 Vestridge Lane
Birmingham, Alabama

Dear Mr. Mullenax:

My secretary at the bank tells me that you have never returned the credit life applications. I was not aware of this, as she had been endeavoring to contact you, and only recently she said your telephone had been disconnected here in Wichita. She gave me a telephone number in Birmingham, and I have tried to contact you for the last two days; your wife indicated you had been on the road and could not be reached.

I cannot emphasize the importance of signing these applications and returning them to us. If you have lost them, please let me know so we can send some new ones. Also, a check that we sent you for the balance of proceeds on your loan has never been cashed. We are wondering if you have received this?

Also, in checking the price of the stock on the Pig & Whistle, on September 11, I find that the market is 25 to 50 cents per share, which is considerably less than we figured when we made the loan. It will be necessary, in view of the decrease in the value of Pig & Whistle, that we take additional collateral. If there is value in the Select Enterprise stock, which we took 2,000 shares of, we ~~still have the other 8,000~~ shares we could take as additional security to support the loan.

It is very important that this be taken care of immediately, and I am asking, upon receipt of this letter, that you contact me. I will be out of town until Wednesday of next week, but I will expect you to call me on Wednesday morning, the 7th of October.

Sincerely,

TOWN AND COUNTRY BUSINESS TRUST

Paul Mann
Trustee

PM/bh
CERTIFIED MAIL NO. 660697

USA 33s - 475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

A 1060

120 IX.

ERNEST R. MULLENAX
2532 North Dellrose
Wichita, Kansas

April 30, 1970

LIABILITIES

Notes secured by stock	$ 142,000.00
Mooney Executive Aircraft (Bought new Jan.1, 1969)	30,000.00
Oil Well	30,000.00
Home	45,000.00
Auto	1,000.00
Total Liabilities	$ 248,000.00

ASSETS

Cash on hand & in the banks	$ 1,500.00
Due from business associates & friends	14,000.00
Due from corporations for services	135,000.00
Home & office furnishings & equipment	21,000.00
Real estate (2 homes)	90,000.00
Mooney aircraft (new price Jan.1,197[illegible], $31,000)	20,000.00
Total	$ 285,500.00

STOCKS

American Investors Life, (3,000 shares) @ $10.00	$ 30,000.00
Modern American Life (600 shares) @ $12.00	7,200.00
Midwest National Life (96 shares) @ $ 4.00	384.00
Founders of American Investment @ $ 4.00 --(5,600 shares)	22,400.00
Diversified Products Corporation @ $ 3.00 --(42,000 shares)	126,000.00
Golden Era Investment Corporation @ $ 2.00 --(127,500 shares)	255,000.00
Diversified Enterprises of America @ $ 1.00 --(51,000 shares)	51,000.00
Total	$ 491,984.00
Oil Well-Market Sale	$ 28,000.00

		ASSETS
		$ 285,500.00
		491,984.00
		28,000.00
		$ 805,484.00
	Liabilities	- 248,000.00
	Net worth	$ 557,484.00

UNION NATIONAL BANK
WICHITA, KANSAS.
F.M. RIFFEY, Vice President.

E.R. Mullenax

USA 338-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

121 IA.

A 1061

Select Enterprises, Inc.

Reed Securities, Kansas City, Missouri
MR. JACK REED — 816, 221-2726

Dalen Investments, Miami, Florida
Mr. Dale Regent — 305, 358-2511

ENTERPRISE INVESTMENTS, Las Vegas, Nevada
Mr. Mel Richards — 702, 382-7030

Hornblower & Weeks, Kansas City, Mo.

Crown Securities
N.Y. City. - John Wells, Broker.
212-349-7210

214-
SELECT-ENTERPRISES, Inc
1979 — 10 000 SHS

574-1343
PHONE (205) [redacted]

CONTINENTAL GENERAL CORPORATION

ERNEST R. MULLENAX
Management Representative

SUITE 200
BUILDING TWO
OFFICE PARK CIRCLE
MT. BROOK, ALA. 35223

for 214-386-6567

S. PALMER KEITH, JR.
ATTORNEY AT LAW
733 FRANK NELSON BLDG.
BIRMINGHAM, ALABAMA

OFFICE PHONE 254-3155 RESIDENCE PHONE 871-2675

A 1062

USA 33-115
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

122 Id.

A 1063

For Value Received, ____ hereby sell, assign and transfer unto _____

_____

_____ Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

_____ to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

Power of Attorney

For Value Received, ...

hereby sell, assign and transfer unto ERNEST R. MULLENAX

(10,000) Shares of the SELECT ENTERPRISES INC.

Capital Stock of the .....

standing in ..... name on the books of said .....

represented by Certificate No. 1979 herewith, and hereby irrevocably constitute and

appoint ..... attorney

to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated MAY 8 1970

Guarantee of signature by a bank official or registered securities dealer:

.....

.....
SIGNATURE OF REGISTERED OWNER OF STOCK

SIGNATURE GUARANTEED
TEXAS BANK & TRUST CO. of DALLAS
By .....
VICE PRESIDENT

TOT 81 (REV. 9-62)

A 1064

A 1065

USA 33-473
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

123 IJ.

A 1066

Received ____ Scrip, all assign and transfer unto ____

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint ____ Attorney, for me and in my name, to make such transfer in the Books of the within named Corporation with full power of substitution in the premises.

Dated ____ 19__

In presence of

A 1067

STOCK ASSIGNMENT

For Value Received, I, we, or either of us, the undersigned J. J. Joiner

hereby sell, assign and transfer unto Ernest R. Mullenax

(10,000) Shares of the Select Enterprises, Inc.

Capital Stock of the _____

standing in my/our name on the books of said _____

represented by Certificate No. 1939 herewith, and hereby irrevocably constitute and

appoint _____ my/our attorney

to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated 5-7 19 70

J. J. Joiner
SIGNATURE OF REGISTERED OWNER OF STOCK

Guarantee of signature by
a bank official or registered
securities dealer:

Jon Edwards

EAB 122

USA 338-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

125 Id.

A 1068

Mac.

$60,000.00 May 8 1970. No. 019585

Nov. 4, 1970 after date, for value received I promise to pay to the

order of STATE NATIONAL BANK OF ALABAMA

Sixty Thousand & No/100 DOLLARS

with interest from until maturity.

And do hereby in good faith free of any claims and liens pledge and grant title and a security interest to said Bank and to any holder of this note, as collateral security for the payment thereof, and of any other obligation of the undersigned to said holder, due or to become due, now existing or hereafter contracted as maker, endorser, guarantor, surety, or otherwise, whether or not in connection with others not parties to this note, and as a general continuing security for the payment thereof, the following property, to-wit:

10,000 shs. Select Enterprises Inc
Cert. # ~~2469~~ 2465

10,000 shs. Selected Enterprises Inc. Cert # 2464

And all other property of the undersigned of any kind or description, tangible or intangible, now or at any time or times hereafter assigned, transferred, or delivered to or left in the coming into the possession, control, or custody of the Bank by or for the account of the undersigned, whether expressly as collateral security or for any other purpose including any dividends declared, or interest accruing thereon and proceeds thereof together with such additional security as the holder hereof may demand, which the undersigned agrees to deposit, should the above security become less valuable or unsatisfactory to said holder for any cause and if such additional collateral is should not be promptly given when demanded, this note shall become immediately due and payable, without notice, which notice is expressly waived. Any indebtedness due from the holder hereof to the undersigned, as maker, endorser or guarantor, and any securities or other property of them or any of them in the possession of the holder may at all times be held and treated as collateral security for the payment of the obligation of undersigned, which rights are in addition to any right of setoff or counterclaim holder may otherwise have. The holder may, at its option, whether or not this note is due, demand, sue for at cost of undersigned, collect or make any compromise or settlement it deems desirable with reference to collateral held hereunder. The holder shall not be bound to take any steps necessary to preserve any rights in the collateral against prior parties which the undersigned hereby assumes to do. No delays or omissions on the part of the holder in exercising any rights hereunder shall operate as a waiver of such right or of any other right under this note. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any such right and/or remedy on any future occasion.

The undersigned shall take all necessary steps to preserve rights against prior parties to instruments or chattel paper constituting the collateral and shall be responsible generally for its preservation, and shall be responsible generally for the preservation of all rights in any collateral pledged hereunder. The Bank shall exercise reasonable care in the custody and preservation of the collateral and shall be deemed to have exercised reasonable care if it takes such action for that purpose as the undersigned shall reasonably request in writing, but no failure to comply with any such request and no omission to do any such act requested by the undersigned shall be deemed a failure to exercise reasonable care.

It is agreed that the Bank may, at the request of or by agreement with any party hereto or any endorser or guarantor hereof, accept in exchange other and different security for that above described, or for any part thereof, and may take additional security, without consulting the others of us and without in any respect affecting our liability for the payment of this note or any other said indebtedness. The Bank may, at its sole discretion, release and deliver to any of us, or to any other person, firm, or corporation, any or all of the property pledged as security for this note, upon trust receipt or trust receipts, or otherwise, for the purpose of collection, sale, transfer, or any other purpose not inconsistent with the provisions hereof, and such release and delivery may be made without notice by said Bank to any of us, and such release shall in no wise impair the rights of the Bank in and to such collateral security, or the liability of any of us hereunder. The Bank may, in its sole discretion, surrender to any of us any or all of such collateral security, which surrender may be made without notice to the other signers hereof, and the surrender of any such security shall in no way impair or affect the rights of the Bank in and to any other security for this obligation, nor impair or affect the liability of any of us hereunder. If the Bank turns over to undersigned or any of them any of the collateral for the purpose of sale, exchange, presentation, collection, renewal, or registration of transfer, and if undersigned or any of them should fail to accomplish such purpose within 21 days from the date the collateral is so received, undersigned agrees to return the collateral not later than the expiration of the 21 days, but if such purpose is accomplished within the 21 days, undersigned shall promptly turn over to Bank all property rights or proceeds received as a result thereof.

Upon any transfer of this note the collateral held at the time of transfer or any part thereof may be delivered to the transferee, who shall thereupon become vested with all the rights and powers above given to Bank in respect thereof. All rights and powers of the Bank hereunder shall inure to its successors and assigns and all agreements herein shall bind the undersigned, its successors, assigns, heirs and personal representatives of undersigned. The surrender of this note upon payment or otherwise shall not affect the right of Bank to retain the collateral herein described for such other liabilities of undersigned which remain unpaid, Bank shall have the right to transfer any part of the collateral into the name of itself or its nominee, exercise any voting rights in collateral, notify those obligated on collateral to make payment thereon to Bank, whether due or to become due, and take control of any proceeds of the collateral.

Undersigned shall be in default under this agreement upon the happening of any of the following events or conditions: (1) Default in the payment or performance of any obligation, covenant, or liability contained or referred to herein or in any note evidencing the same. (2) Any warranty, covenant, representation, or statement made or furnished to Bank by or on behalf of undersigned proves to have been false in any material respect when made or furnished. (3) Any event which results in the acceleration of the maturity of the indebtedness of undersigned to others under any indenture, agreement, or undertaking. (4) Loss, theft, damage, destruction, sale, or attempted sale, transfer, or attempted transfer of encumbrance to or of any of the collateral or the making of any levy, seizure or attachment thereof or thereon or against any other assets or experiences of undersigned. (5) Death, dissolution, termination of existence, insolvency, business failure, inability to pay debts as they mature, appointment of a receiver of any part of the property or assignment for the benefit of creditors by or the commencement of any proceeding under any bankruptcy or insolvency laws by or against undersigned or any guarantor or surety for undersigned, or the filing of any suit or lien against undersigned or the property of undersigned or any guarantor or surety for undersigned. (6) If Bank deems itself insecure. (7) Failure of the undersigned promptly to furnish satisfactory additional security as above provided. (8) Failure to pay when due any premium on any life or other insurance policy held as collateral hereunder.

The parties to this note, whether maker, endorser, surety or guarantor, each for himself, agrees to pay interest at the rate of 8% per annum from maturity until paid.

THE PROVISIONS ON THE BACK SIDE HEREOF ARE A PART OF THIS NOTE

Witness our hands and seals.

Ernest R. Mullenax (L.S.)
3025 Massey Road (L.S.)
Vestavia Hills, Alabama,
Address 35216

180/8

240[illegible]

Form M-1-D.P.C.

A 1069

Upon default and at any time thereafter Bank may declare all obligations secured hereby immediately due and payable. In the event of acceleration maker will be entitled to credit for unearned interest. Presentment, demand, protest, or notice of any kind are hereby expressly waived. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will give undersigned reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of the undersigned shown on the records of Bank at least five (5) days before the time of the sale or disposition. Expenses of selling or the like shall include a reasonable attorney's fee and legal expenses of Bank. Such sale shall be in bar of all right of redemption, homestead, and exemptions of every kind in any state, which are hereby expressly waived. Bank shall have full power and authority at any time to exercise all or any one or more of its remedies herein and shall have all the rights of a secured party under the Uniform Commercial Code of Alabama. If this note be placed in the hands of an attorney for Bank for collection or the protection of any of the collateral, undersigned will pay all costs of collection and a reasonable attorney's fee. The time of payment may be extended without notice.

Each and every endorser of this note hereby waives all right of exemption of property from levy and sale under execution or other process for the collection of debts as provided for in the Constitution and laws of the State of Alabama, or any other State in the United States of America, and hereby waives, as to each endorser hereof, that he shall pay any costs of collecting this note after failure to pay when same becomes due under the terms hereof including a reasonable attorney's fee for all services rendered in any way in any suit against any endorser, or in connection with attempting to collect from any endorser, or in protecting the collateral, if any, securing this note, and hereby waives demand, protest, notice and all other requirements necessary to bind them as endorsers and they agree that time of payment hereof may be extended from time to time without notice to them of such extension.

Each endorser adopts the provisions in the face of this note.

Witness our hands and seals.

_____ (L. S.)

_____ (L. S.)

A 1070

DIRECT LIABILITY

NAME Ernest R. Millenax

ADDRESS ~~3025 Massey Road~~ Vestavia ~~Hills, Alabama~~ 35216
2117 Ashleridge Lane

SHEET NO.

DATE ENTERED	DATE OF NOTE	NUMBER	NO	COLLATERAL OR ENDORSER	DEBIT	MATURITY	CREDIT	DATE PAID	BALANCE
MAY 8 '70	MAY 8 '70	19,585	N.	210 10,000 SHS SELECT ENTER. INC. CERT. #1979 8%	50,000.00	11-4-70		2400.00	50,000.00
MAY 20 '70	MAY 18 '70	19,688	N.	200 8%	5,000.00	6-8-70		23.33	55,000.00
[illegible] 22 71	[illegible] 22 71	19,585		7-8-71 CHARGED OFF			30,000.00		
	[illegible] 22 71	19,688		CHARGED OFF			5,000.00		30,000.00
[illegible] 21 71	[illegible] 21 71	19,585		CHARGED OFF			30,000.00		.00

15-0043

STATE NATIONAL BANK
DECATUR, ALABAMA

A 1071

DIRECT LIABILITY

Chapter 11 1-9-70

NAME Joint Talent Group, Inc.
ADDRESS Office Park Circle Bldg. # 2
Suite 200
Birmingham, Alabama 35200

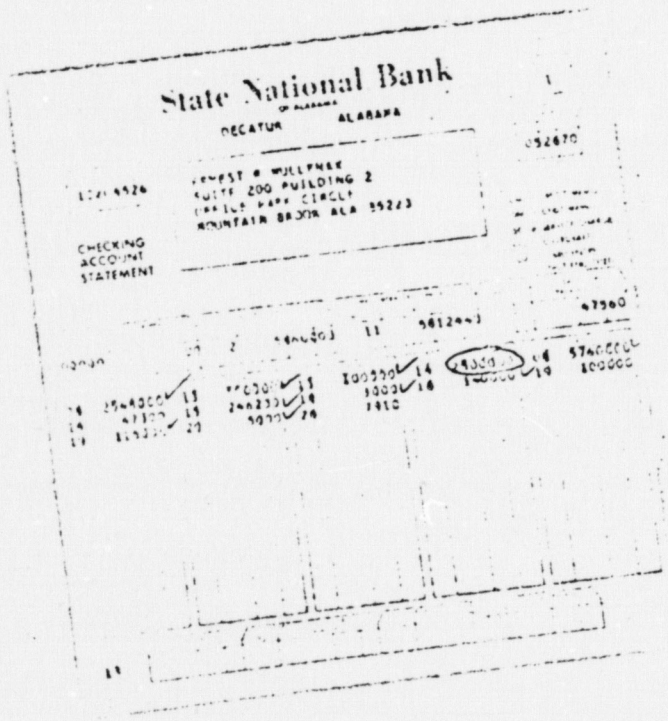
SHEET NO. 1

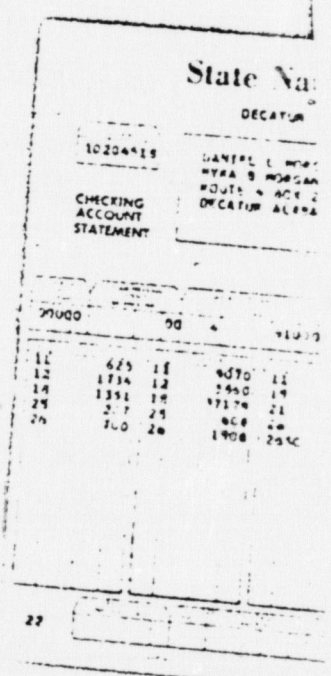
DATE ENTERED	DATE OF NOTE	NUMBER	M O	COLLATERAL OR ENDORSER	DEBIT	MATURITY	CREDIT	DATE PAID	BALANCE
JAN 9'70	JAN 7'70	18,556	NWRC	180,072 SHS CONTINENTAL GENERAL CORP 5%	30,000.00 +	4-9-70		675.00	30,000.00 •
MAY 9'70		18,556					30,000.00 -		
MAY 8'70	MAY 9'70	19,583	RWRC10	180,072 SHS CONTINENTAL GENERAL CORP. 10,000 SHS SELECT ENTERPRISES INC. 9%	30,000.00 +	6-8-70		400.00	30,000.00 •
JUN 3'71		19,583					23,090.00 -		6,910.00 •
JUN 15 72	JUN 15 72	19,583		¥ CHARGED OFF 6 13 72			6,910.00		.00

STATE NATIONAL BANK
DECATUR, ALABAMA

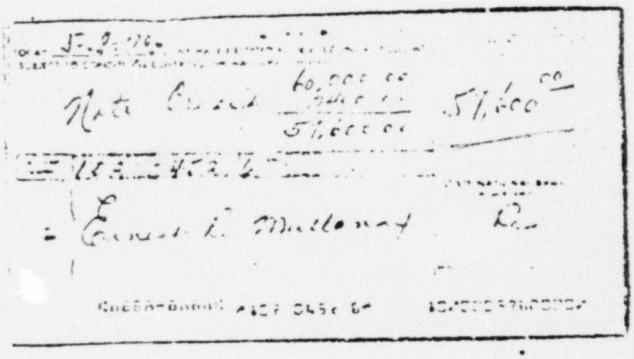
15-0043

A 1072


State National Bank
OF ALABAMA
DECATUR ALABAMA
CHECKING ACCOUNT STATEMENT


State Na
DECATUR
CHECKING ACCOUNT STATEMENT

A 1073



S-642

Dexter Ala., May 6 1970

State National Bank of Alabama

Gentlemen:

In consideration of your making, renewing or extending a loan or loans to Joint Talent Group Inc

hereinafter referred to as the "borrowed", for which the following property belonging to me has been tendered to you as collateral security, to-wit:

11,000 shares Talent Enterprises Inc
Cert # 1932

and for the purpose of enabling said borrower to obtain credit therefor, I hereby certify that the said property has been duly assigned, released, transferred and delivered by me to said borrower, and by these presents, I do hereby assign, release and transfer unto said borrower all of my right, title and interest in and to said property, and hereby expressly authorize said borrower to pledge or hypothecate, all or any part of said property for the indebtedness aforesaid, and all renewals and extension thereof, and also for any and all other indebtedness of the same borrower to you, created at any time before this authorization shall have been revoked in writing and all renewals and extensions thereof, and I waive notice of all or any such indebtedness or extension, or renewal thereof.

Furthermore, I request, that you give, or continue to give said borrower, credit in the form of loans or renewals, or extensions as aforesaid, and in consideration of all or any such credit so granted by you, I agree that all or any property pledged or hypothecated as aforesaid, shall be subject in your hands or those of your assignees, or pledgee or pledgees, to all powers which would apply thereto by contract or otherwise if said property in fact so pledged or hypothecated stood in the name of said borrower himself and not in my name. The proceeds of all loans shall be accounted for and paid over to the borrower aforesaid, and said collateral securities may be disposed of and/or paid over, to or upon the direction of said borrower.

This agreement shall be binding on my heirs, executors, administrators and assigns and inure to the benefit of your successors and/or assigns.

Ernest R Mullinax

WITNESS:

W. D Cathey

A 1074

IRREVOCABLE STOCK POWER OF ATTORNEY

Know all Men by these Presents:

THAT

FOR VALUE RECEIVED, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto

Shares of

STOCK of the

standing in

name on the books of the said

represented by Certificate No.

AND

do hereby constitute and appoint

true and lawful Attorney, IRREVOCABLY, for

and stead, but to

us, to sell, assign, transfer and make over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that

virtue hereof.

herewith.

IN WITNESS WHEREOF,

said Attorney or

substitute or substitutes shall lawfully do by

Signed, Sealed and Delivered in presence of

the

have hereunto set

hand and seal at

day of

19

(L. S.)

FORM 15 325

A 1076

IRREVOCABLE STOCK POWER OF ATTORNEY

Know all Men by these Presents:

THAT

FOR VALUE RECEIVED, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto

Shares of STOCK of the

standing in name on the books of the said

represented by Certificate No. herewith.

AND do hereby constitute and appoint

true and lawful Attorney, IRREVOCABLY, for and in name and stead, but to use, to sell, assign, transfer and make over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that said Attorney or substitute or substitutes shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, have hereunto set hand and seal at

the day of 19.

Signed, Sealed and Delivered in presence of

Ernest P. Mellen (L. S.)

FORM 15 0025 DECATUR PRINTING CO., INC., DECATUR, ALA.

A 1077

IRREVOCABLE STOCK POWER OF ATTORNEY

Know all Men by these Presents:

THAT.....

FOR VALUE RECEIVED, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto.....

.....

Shares of.....STOCK of the.....

.....

standing in.....name on the books of the said.....

represented by Certificate No.....herewith.

AND.....do hereby constitute and appoint.....

.....

.....true and lawful Attorney, IRREVOCABLY, for.....and in.....name and stead, but to.....use, to sell, assign, transfer and make over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that.....said Attorney or.....substitute or substitutes shall lawfully do by virtue hereof.

IN WITNESS WHEREOF,.....have hereunto set.....hand and seal at.....

.....the.....day of.....19....

Signed, Sealed and Delivered in presence of

J. L. Calhoun Ernest R. Mullen & Co. (L. S.)

FORM 15 0025 DECATUR PRINTING CO., INC., DECATUR, ILL.

A 1078

USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

127 Id.

STATE NATIONAL BANK
OF ALABAMA

4444

May 14 19 70

PAY TO THE ORDER OF East Side Natl. Bank, Wichita, Kansas $ 25,000.00

CTS DOLLARS

FEDERAL RESERVE BANK
BIRMINGHAM, ALABAMA

COPY - NOT NEGOTIABLE

ALL MULLENAX

May 9, 1970

Pay to the order of MULLENAX $25000.00

Twenty Five Thousand

STATE NATIONAL BANK

Ernest R Mullenax

STATE NATIONAL BANK
OF ALABAMA
Decatur, Ala. 35601

COLLECTION DEPARTMENT

13879

DATE 5-14-70

YOUR NUMBER	YOUR DATE	PAYER	PROTEST	DUE	AMOUNT
001535	5-12-70	Ernest Mullenax			
DRAFT OR DEBIT: Draft	DESCRIPTION: M. L. Mullenax ck		No	61	25,000.00

REASON FOR NON-PAYMENT OF RETURNED ITEMS ENDORSED ON ITEM

PLUS INTEREST	
LESS EXPENSE	
PROCEEDS	

MAIL TO:
East Side National Bank
Collection Department
6225 E. Kellogg
Wichita, Kansas 67218-

SPECIAL INSTRUCTIONS:

REMITTED

RETURNED

CREDITED

19 0001

A 1079

A 1080

USA 33s-475
(E.D. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

128 Id.

$5,000.00 — May 18, 1970 No. U 9880

June 8, 1970 after date, WITHOUT GRACE, for value received

I promise to pay STATE NATIONAL BANK OF ALABAMA or order

Five Thousand + 00 DOLLARS

with _____ interest from _____ until maturity.

The makers and endorsers of this note hereby expressly waive all right to claim exemptions allowed by the Constitution and Laws of this or any other State, and agree to pay all cost of collecting this note, including a reasonable attorney's fee for all services rendered in any way, in any and all suits against any maker or endorser, or in collecting or attempting to collect, or in securing or attempting to secure this debt. If this note is not paid at maturity, notice and protest on the non-payment of this note is hereby waived by each maker and endorser, and it is understood and agreed by each person whose name is signed hereto that he signs this note without any condition or representation as to any other person or persons having signed the same, or that any other person or persons shall sign the same as maker or endorser. The holder of this note may become purchaser at sale of any property securing this note.

The issuance of a writ of garnishment against any party herein directed to the bank matures this debt, and maker will be entitled to credit for unearned interest. The parties to this note, whether maker, endorser, surety or guarantor, each for himself, agrees to pay interest at the rate of 8% per annum from maturity until paid. Witness our hands and seals.

2/8 — 7/7/37

Ernest R. Mullenax (L.S.)
3025 Massey Rd (L.S.)
Vestavia Hills, Ala. 35216

FORM 15 0005—DECATUR PRINTING CO., INC., DECATUR, ALA.

USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

128 Id.

A 1081

Each and every endorser of this note hereby waives all right of exemption of property from levy and sale under execution or other process for the collection of debts, as provided for in the Constitution and Laws of the State of Alabama, or any other State in the United States of America and it is hereby agreed by each endorser that in the event this note is not paid at maturity or within any extension thereof, including a reasonable attorney's fee for all services rendered in any way in any suit against any endorser or in collecting or attempting to collect, or in securing, or attempting to secure this debt. Each and every endorser of this note hereby waives demand, protest, notice of protest and all requirements necessary to hold them as endorsers and hereby agrees that time of payment hereof may be extended from time to time without notice to them of such extension.

Each endorser adopts the provisions in the face of this note.

Witness our hands and seals.

_____ (L. S.)

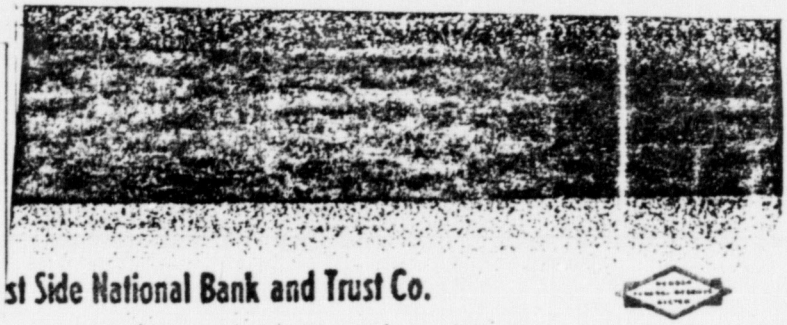
_____ (L. S.)

A 1082

SA 336-475
(I.D. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

294 Id.



st Side National Bank and Trust Co.

AMOUNT OF DEPOSITS	NUMBER OF CHECKS	AMOUNT OF CHECKS	CHECK CHARGE	CURRENT BALANCE
25,700.00	55	13,103.25		6,730.66

MULLENAX, ERNEST R. OR MARGARET L
2532 NORTH DELLROSE
WICHITA, KANSAS 67220

32-2662-8
ACCOUNT NUMBER

06/03/72
STATEMENT DATE

THIS IS A STATEMENT OF
YOUR ACCOUNT

DATE	CHECKS AND OTHER ITEMS			DEPOSITS	BALANCE
				BALANCE FORWARD →	133.91
/07	18.50				115.41
/08	5.00				110.41
/11	40.00				70.41
/13	15.[illegible]*	25.00*	15.40*		15.01
/15	4.[illegible]*	3.72*			4.79
/19	1,624.[illegible]*	1.50	30.00	25,000.00	23,569.22
	[illegible]	1,992.87	4,000.00		17,650.35
/20	2[illegible]	2,000.00	50.49		15,134.03
	6[illegible]	30.19	102.00		14,333.42
	[illegible]				14,303.62
/21	[illegible]	100.00	379.01		13,823.61
	3[illegible]				13,423.61
/21	1,75[illegible]	25.00	69.20		13,669.41
	[illegible]	1.93			13,613.71
/22	[illegible]	215.00	10.42	722.31	13,474.59
	[illegible]				13,444.59
/26	[illegible]	[illegible]	65.31		13,[illegible]
	[illegible]	1,[illegible]	12.25		[illegible]
	[illegible]	[illegible]	18.[illegible]		[illegible]
/30	[illegible]	1[illegible]			[illegible]
/31	[illegible]	1[illegible]	[illegible]		[illegible]
/31	[illegible]				[illegible]
/[illegible]	[illegible]	[illegible]			[illegible]

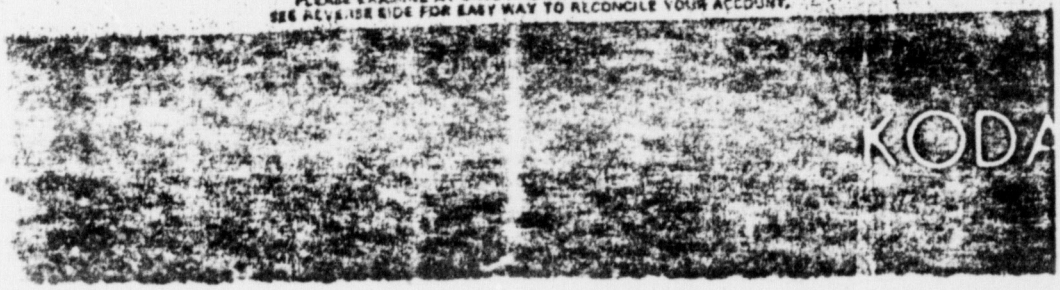
A 1083

YOUR ACCOUNT

CHECKS AND OTHER ITEMS			DEPOSITS	BALANCE
			BALANCE FORWARD →	133.91
				115.41
				110.41
				70.41
				15.01
	25.00*	15.40*		4.79
	3.72*			23,569.22
	3.50	30.33	25,000.00	17,660.35
	1,992.87	4,000.00		15,134.03
	2,000.00	50.49		14,333.62
	20.19	192.00		14,309.62
				13,822.61
	100.00	379.01		13,493.61
				10,648.41
	25.00	59.20		10,619.01
	1.93			10,474.59
	235.00	10.32	700.33	10,444.59
				10,294.96
	5.00	45.85		9,254.01
	1,000.00	12.85		9,213.16
	21.30	19.00		9,045.15
	150.00			8,833.40
	199.00	6.00		7,833.40
				7,793.05
	15.35			6,745.66
	1,000.00	20.84		6,730.66
				6,730.66

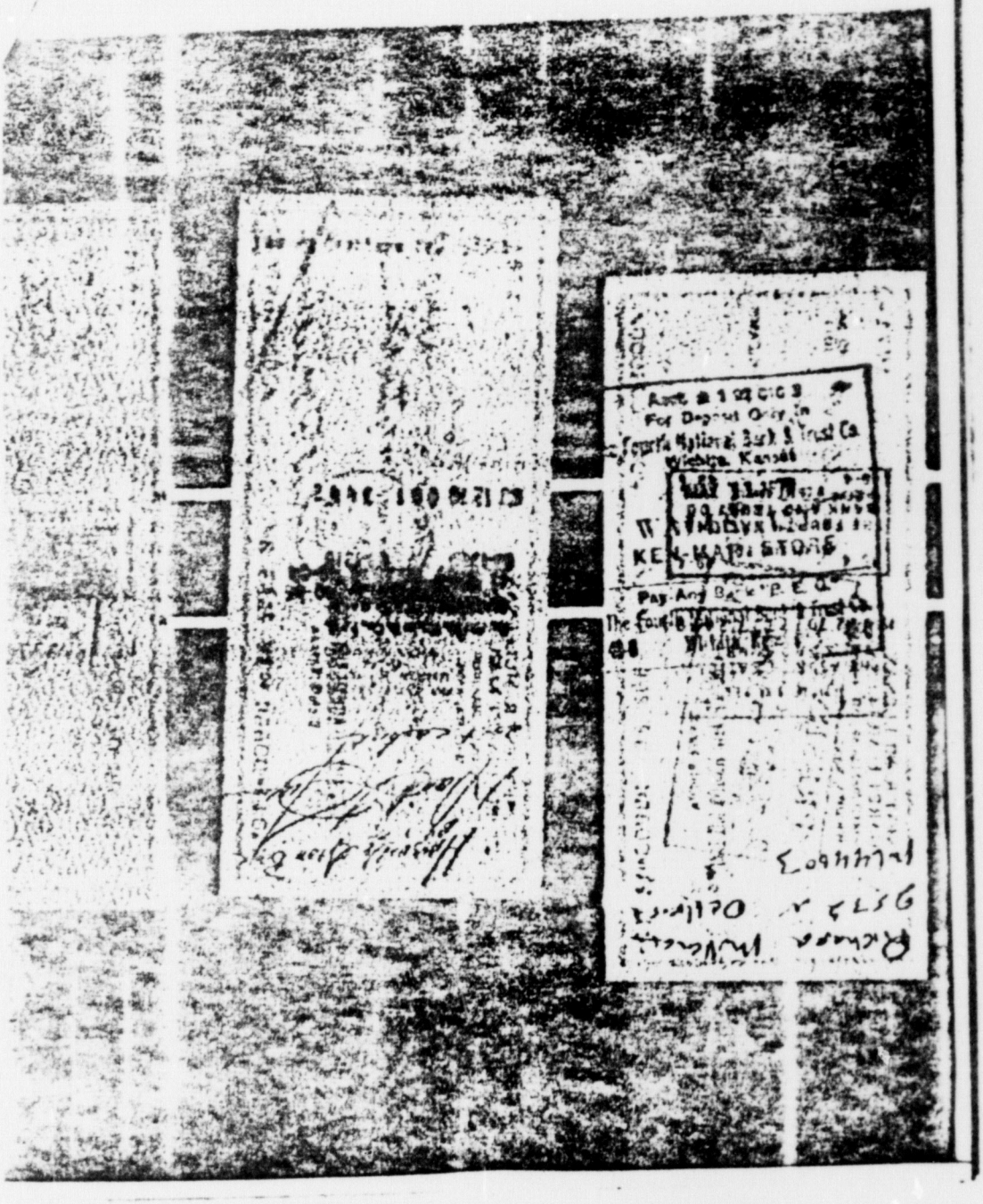
EC - ERROR CORRECTION SC - SERVICE CHARGE OD - OVERDRAFT

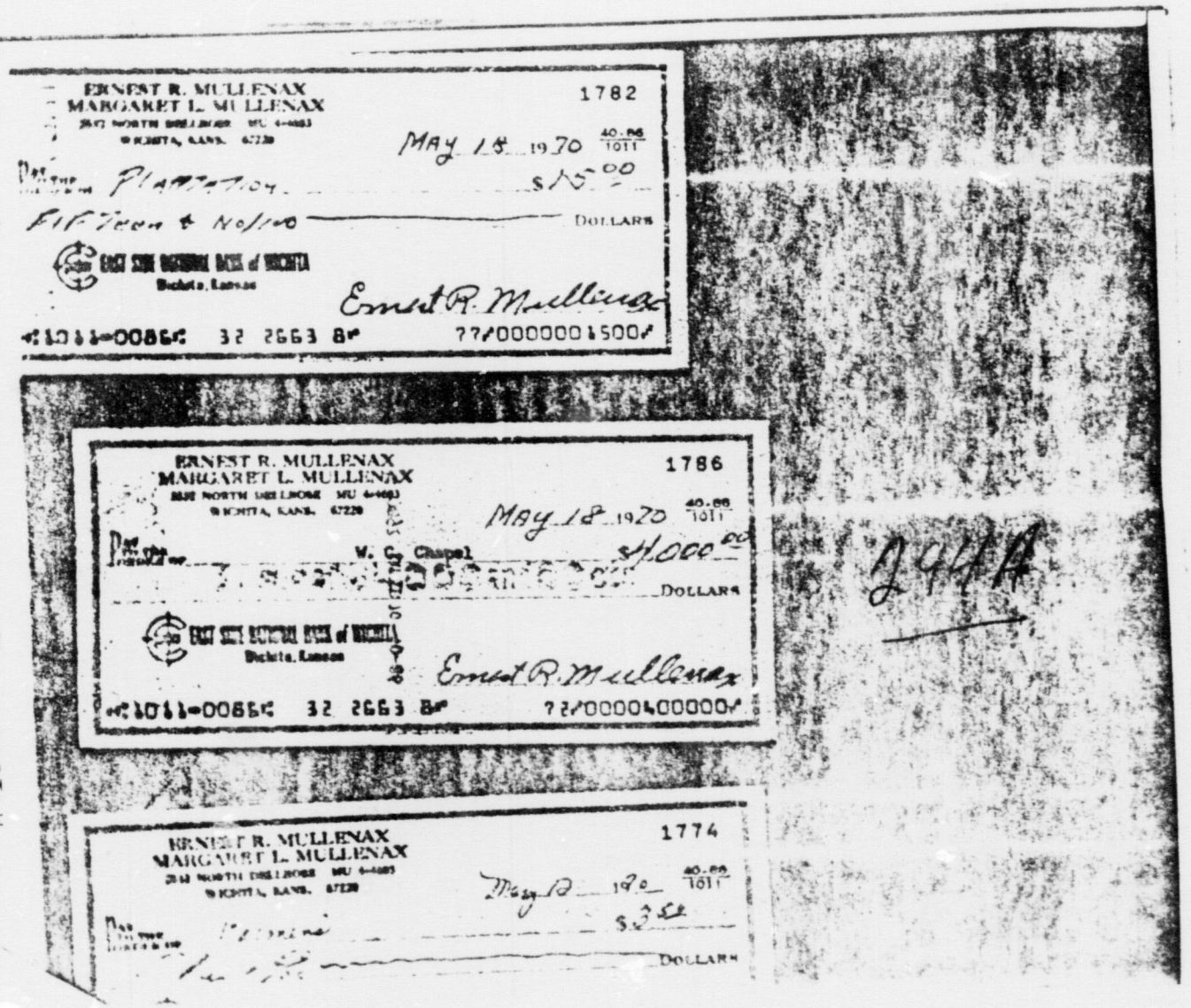
PLEASE EXAMINE AT ONCE AND REPORT ANY DIFFERENCE —
SEE ALTERNATE SIDE FOR EASY WAY TO RECONCILE YOUR ACCOUNT.



A 1084

ERNEST R. MULLENAX
MARGARET L. MULLENAX
PRESENTED
DOLLARS
1764
DOLLARS





ERNEST R. MULLENAX
MARGARET L. MULLENAX
[redacted]
WICHITA, KANS. 67220

1782

MAY 18 1970 40-86/1011

Pay to the order of PLANTATION $15.00

FIFTEEN & NO/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Ernest R. Mullenax

⑆1011-0086⑆ 32 2663 8⑈ ⑈0000001500⑈

ERNEST R. MULLENAX
MARGARET L. MULLENAX
[redacted]
WICHITA, KANS. 67220

1786

MAY 18 1970 40-86/1011

Pay to the order of W. C. Chapel $1.000 00

DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Ernest R. Mullenax

⑆1011-0086⑆ 32 2663 8⑈ ⑈0000400000⑈

2444

ERNEST R. MULLENAX
MARGARET L. MULLENAX
[redacted]
WICHITA, KANS. 67220

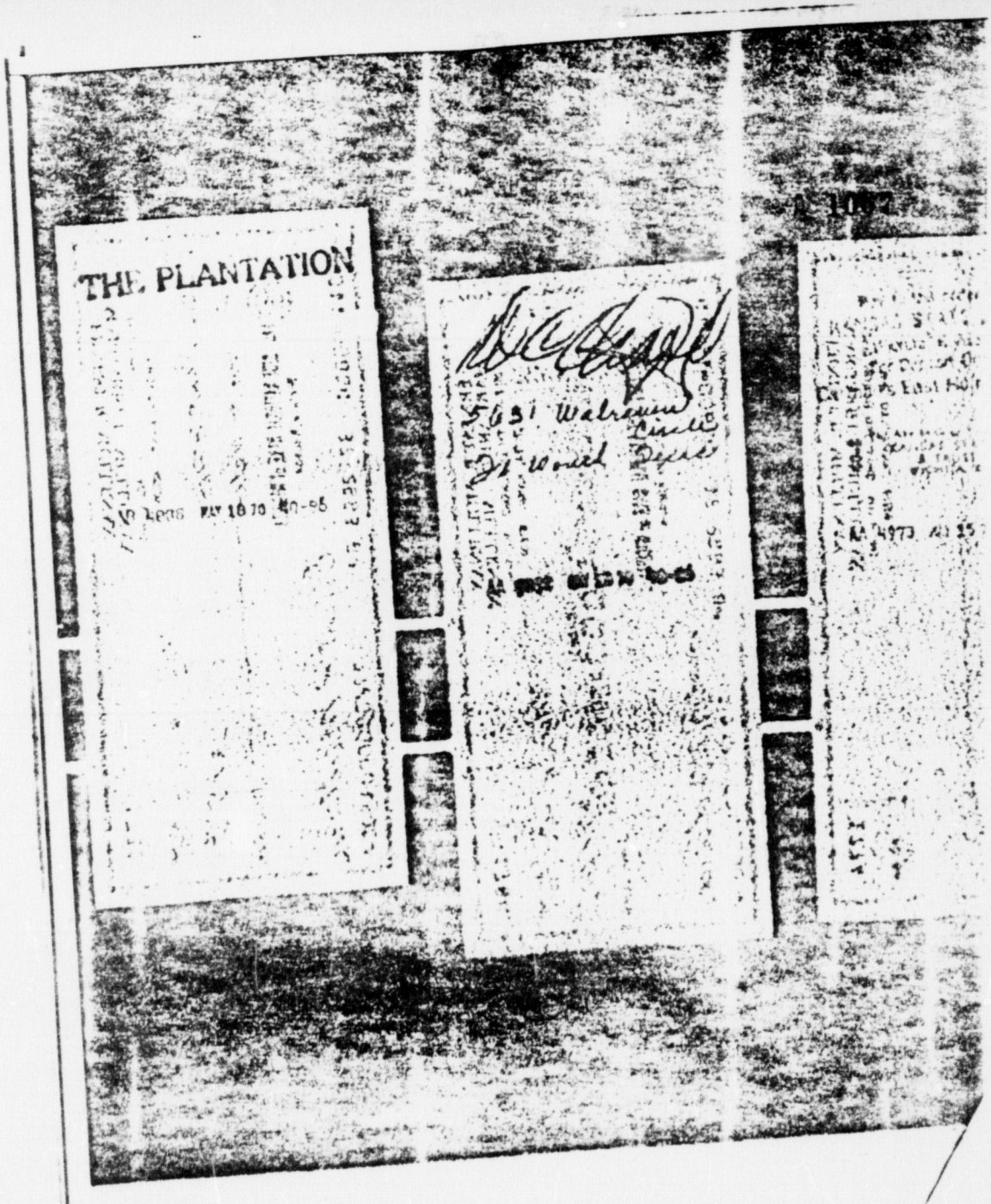
1774

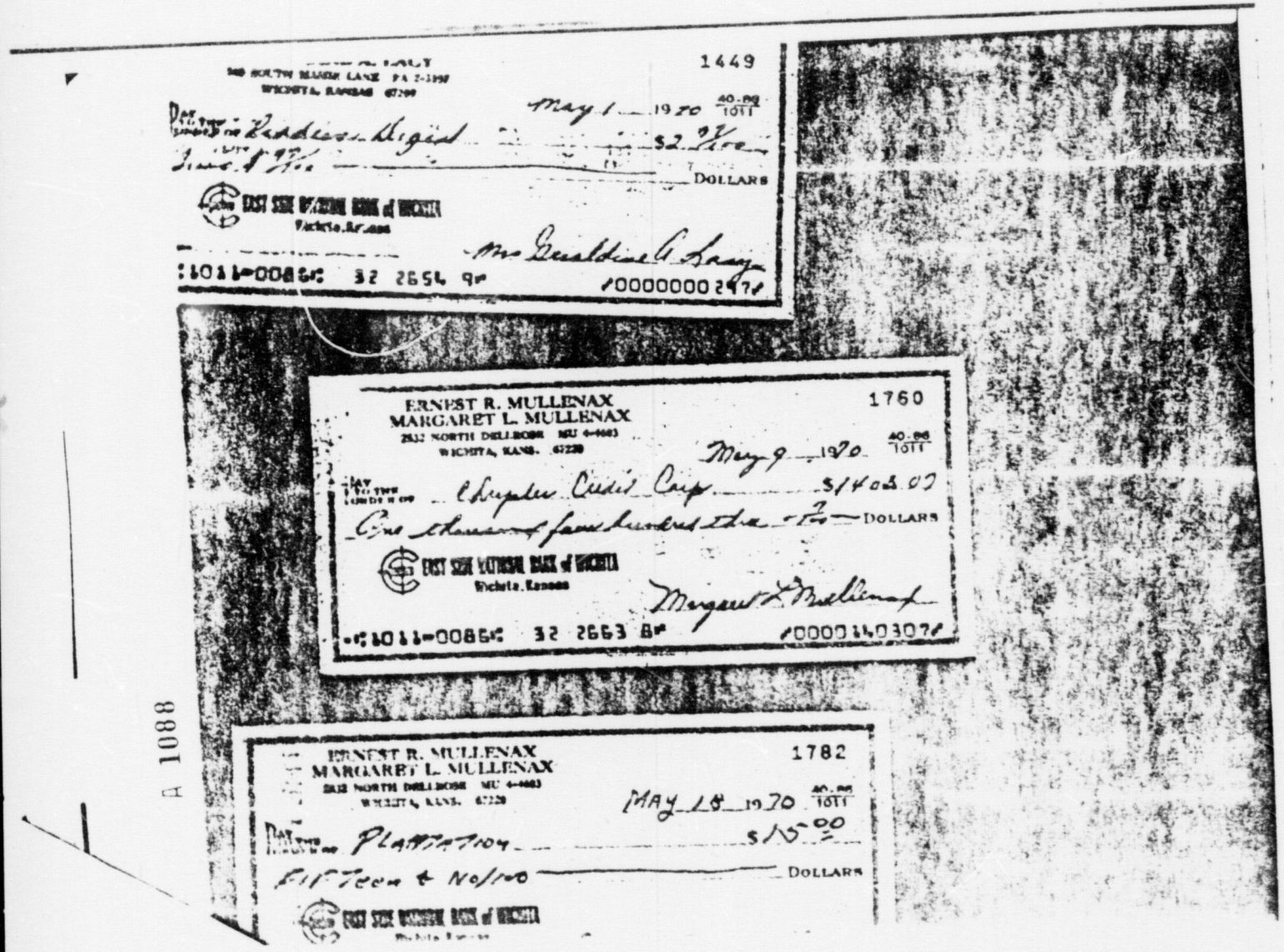
May 18 1970 40-86/1011

Pay to the order of [illegible] $3.50

DOLLARS

A 1086


THE PLANTATION
5631 Walnut Circle
Diamond Bar



1449

May 1 1970 40-88/1011

Pay to the Order of Reddies Digest $2.00

Two & 00/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Mrs Geraldine G Long

:1011-0086: 32 2654 9# /0000000200/

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLRIDGE MU 4-4683
WICHITA, KANS. 67220

1760

May 9 1970 40-88/1011

Pay to the Order of Chrysler Credit Corp $1403.07

One thousand four hundred three & 07/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L Mullenax

:1011-0086: 32 2663 8# /0000140307/

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLRIDGE MU 4-4683
WICHITA, KANS. 67220

1782

MAY 18 1970 40-88/1011

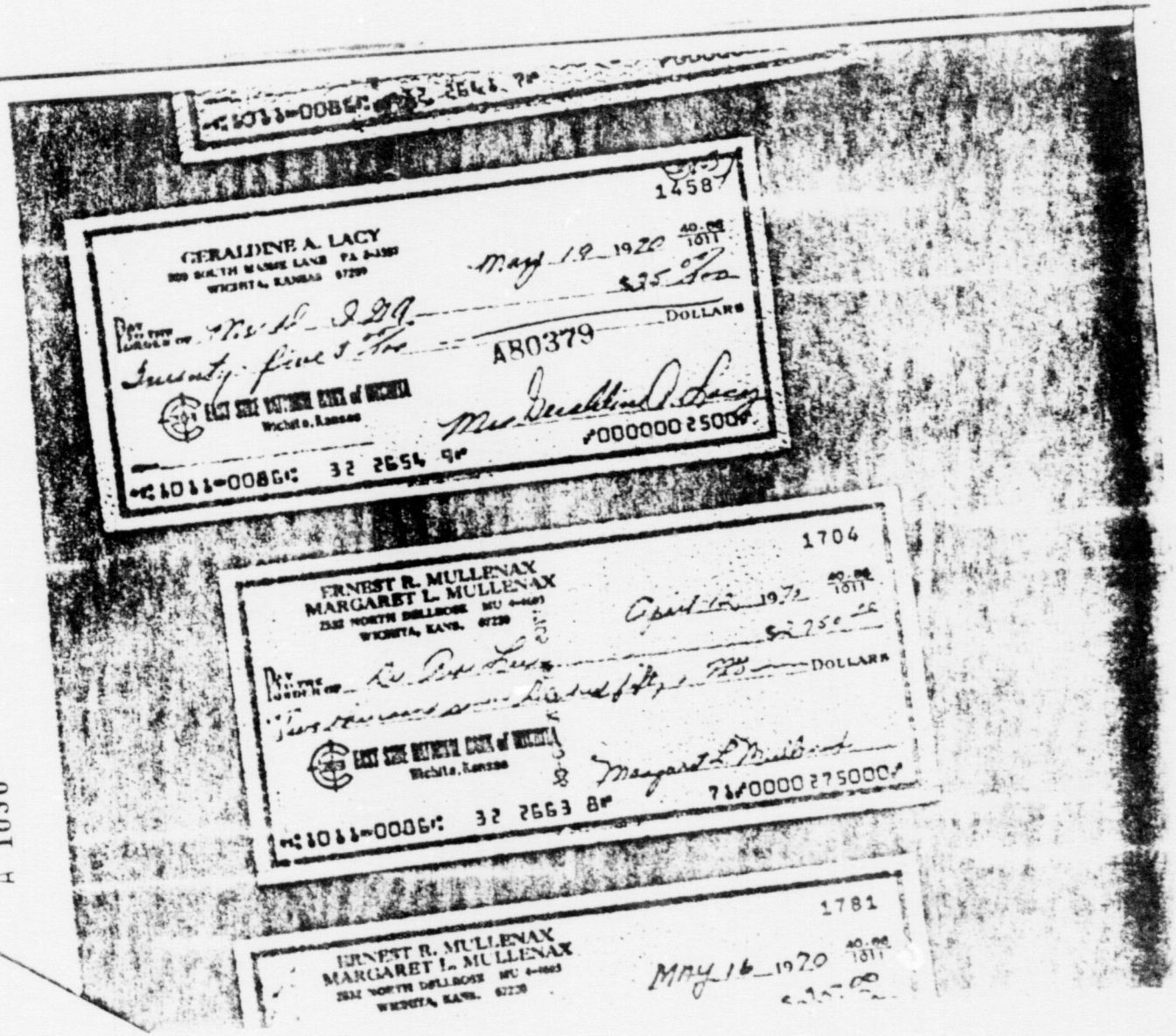
Pay to the Order of Plantation $15.00

Fifteen & No/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA

A 1088

A 1089



1458

GERALDINE A. LACY
[illegible] SOUTH MAINE LANE PA 6-[illegible]
WICHITA, KANSAS 67230

May 19 1970 40-98 1011

$35.00

Pay to the order of Mrs. D.D.Q.

Twenty-five & 00 DOLLARS

A80379

THE FIRST NATIONAL BANK of WICHITA
Wichita, Kansas

Mrs Geraldine A. Lacy

⑈000000 2500⑈

⑆1011-0086⑆ 32 2654 9⑈

1704

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 6-4603
WICHITA, KANS. 67220

April 16 1970 40-98 1011

$ 275.00

Pay to the order of Lic Dept Lens

Two hundred seventy-five & 00/100 DOLLARS

THE FIRST NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

⑈0000 27500⑈

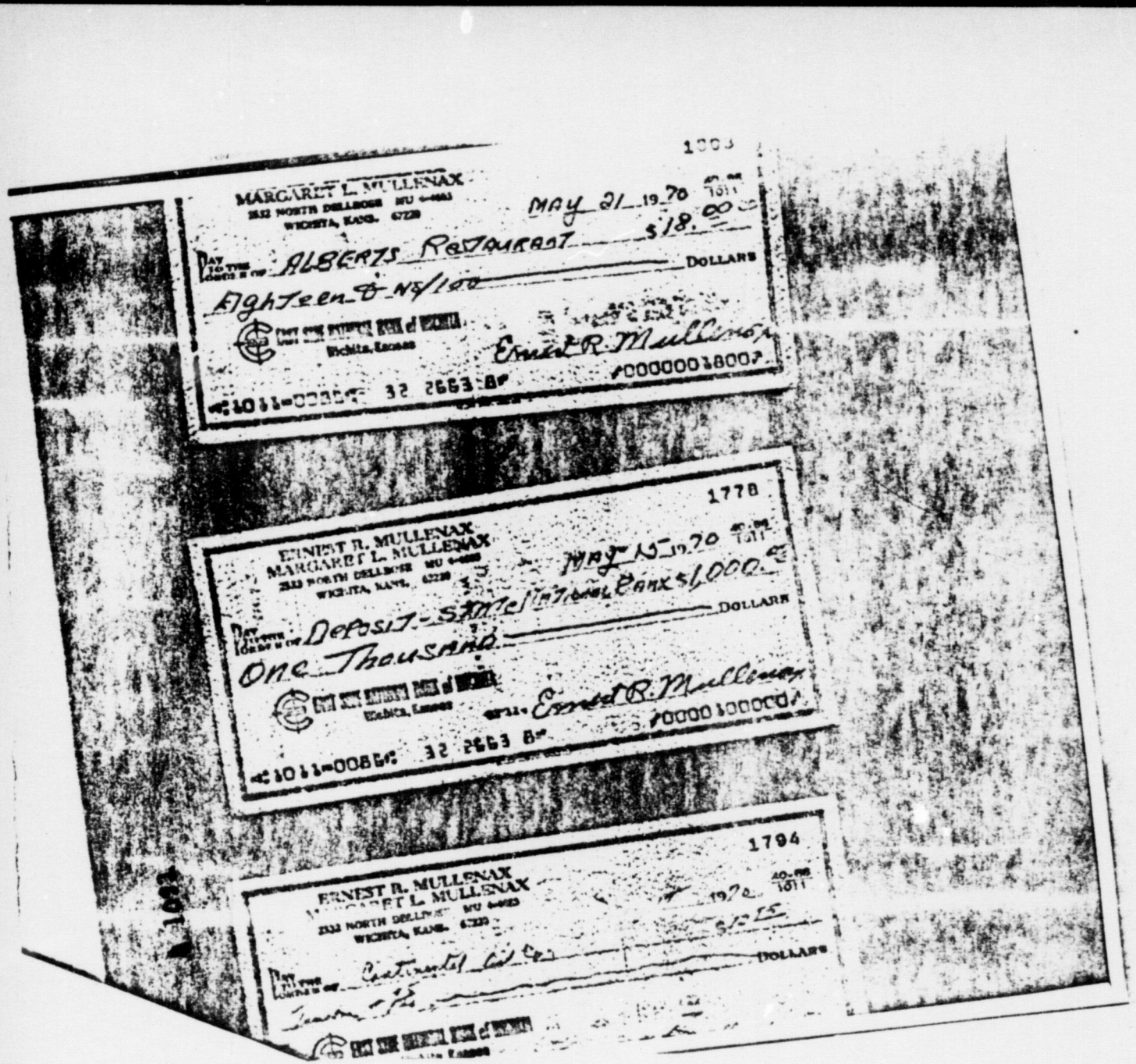
⑆1011-0006⑆ 32 2663 8⑈

1781

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 6-4603
WICHITA, KANS. 67220

May 16 1970 40-98 1011

A 1090



MARGARET L. MULLENAX
2532 NORTH DELLROSE WU 4-4983
WICHITA, KANS. 67220

1006

MAY 21 19 70 40-58 1011

PAY TO THE ORDER OF ALBERTS RESTAURANT $18.00

Eighteen & NO/100 DOLLARS

THE FIRST STATE BANK of WICHITA
Wichita, Kansas

Ernest R. Mullenax

⑈1011⑈0085⑈ 32 2663 8⑈ ⑆000001800⑆

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE WU 4-4983
WICHITA, KANS. 67220

1778

MAY 19 19 70 40-58 1011

PAY TO THE ORDER OF Deposit - State National Bank $1,000.00

One Thousand DOLLARS

THE FIRST STATE BANK of WICHITA
Wichita, Kansas

Ernest R. Mullenax

⑈1011⑈0085⑈ 32 2663 8⑈ ⑆00001000000⑆

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE WU 4-4983
WICHITA, KANS. 67220

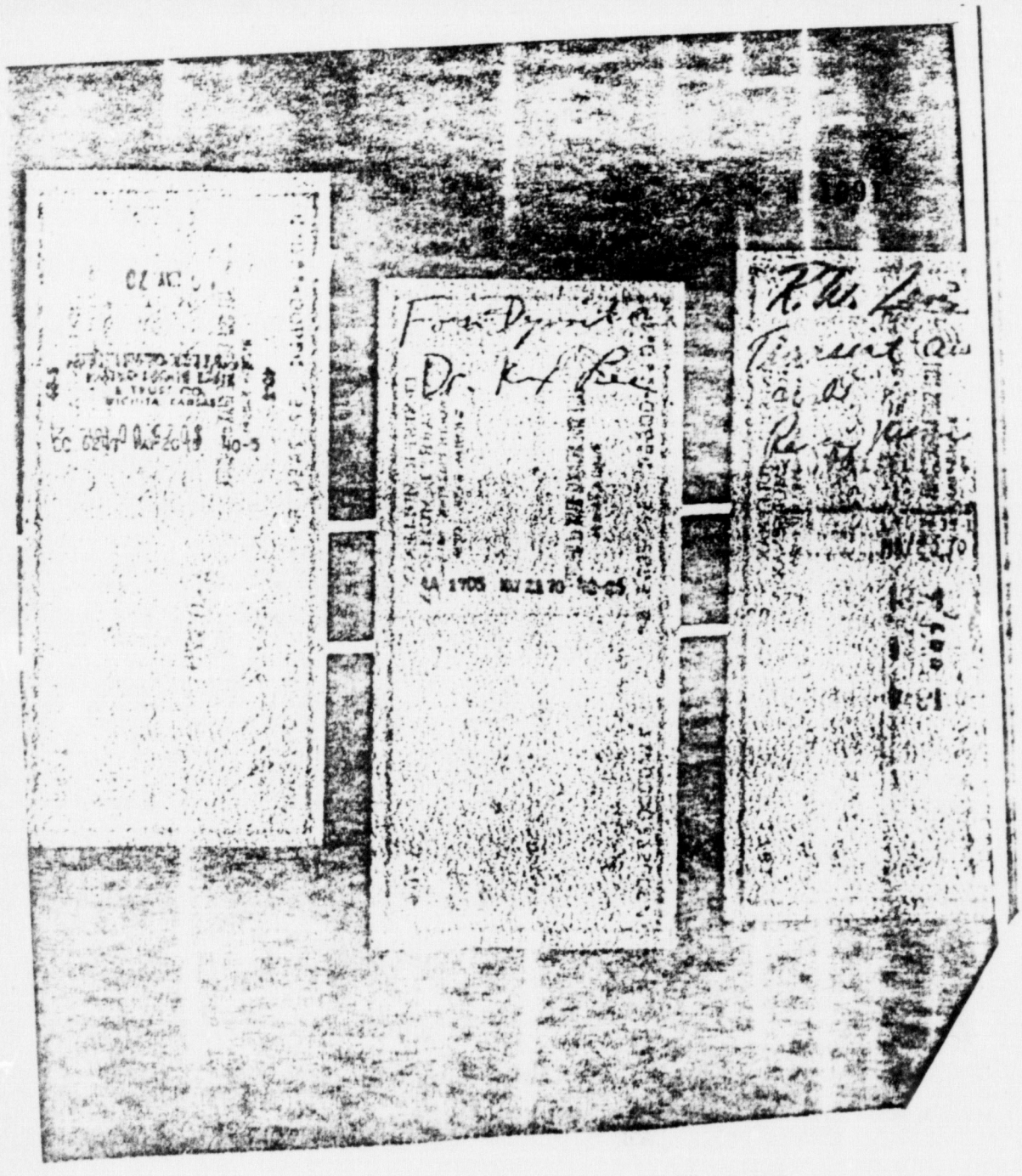
1794

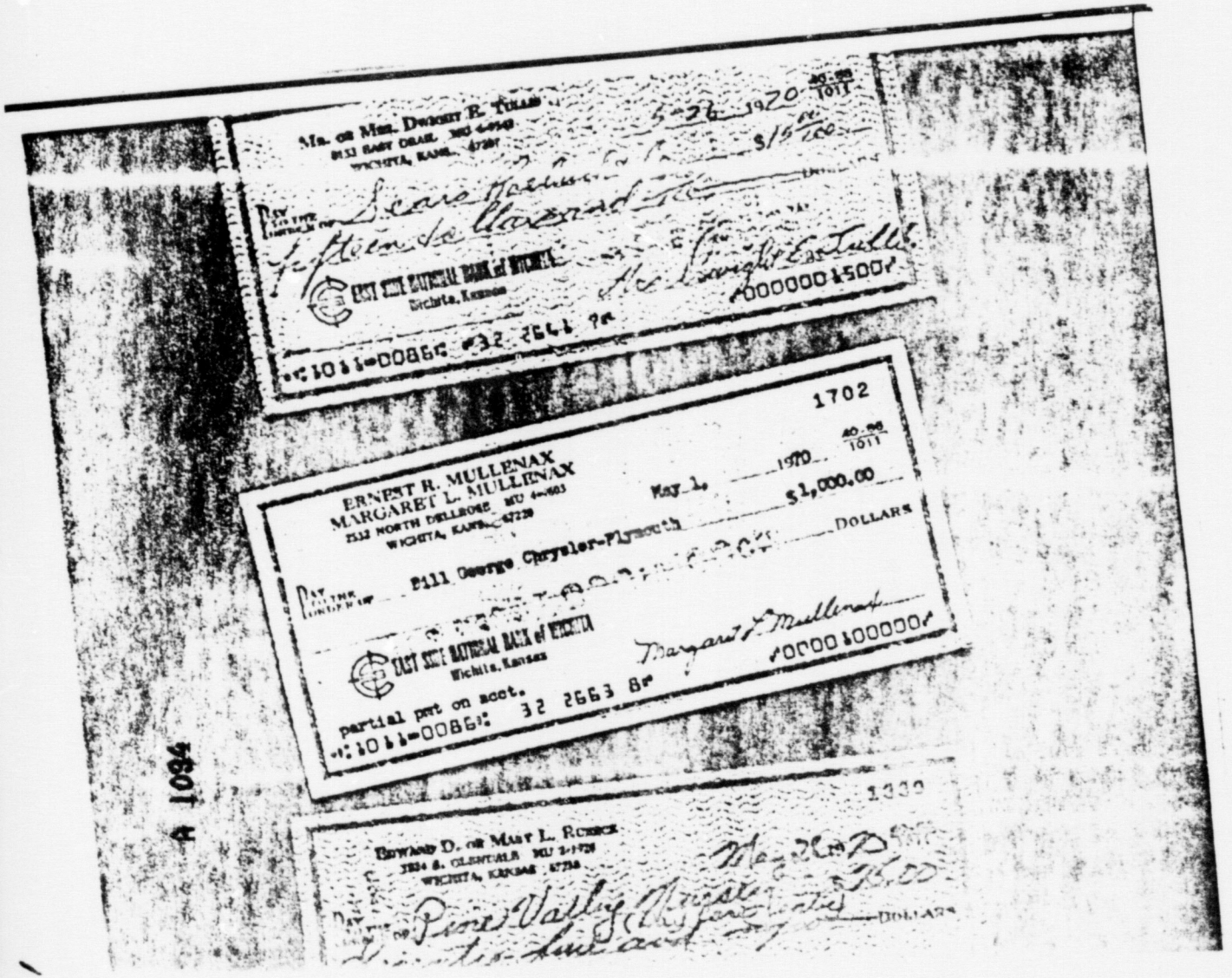
19 70 40-58 1011

PAY TO THE ORDER OF Continental Oil Co. $20.15

DOLLARS

THE FIRST STATE BANK of WICHITA
Wichita, Kansas





Mr. or Mrs. Dwight R. Tullis
3131 East Drake MU 4-4949
Wichita, Kans. 67207

5-26 1970 40-98/1011

$15.00/100

Pay to the order of Sears Roebuck & Co.

Fifteen & 00/100

The Dwight R. Tullis

Central State National Bank of Wichita
Wichita, Kansas

⑈1011⑈0086⑆ 32 2641 7⑈ ⑈000000$500⑈

1702

Ernest R. Mullenax
Margaret L. Mullenax
2532 North Dellrose MU 4-4603
Wichita, Kans. 67220

May 1, 1970 40-98/1011

$1,000.00

Pay to the order of Bill George Chrysler-Plymouth

One Thousand & 00/100 Dollars

Central State National Bank of Wichita
Wichita, Kansas

partial pmt on acct.

⑈1011⑈0086⑆ 32 2663 8⑈ ⑈00001000000⑈

Margaret L. Mullenax

1030

Edward D. or Mary L. Rebeck
3834 S. Glendale MU 2-1728
Wichita, Kansas 67216

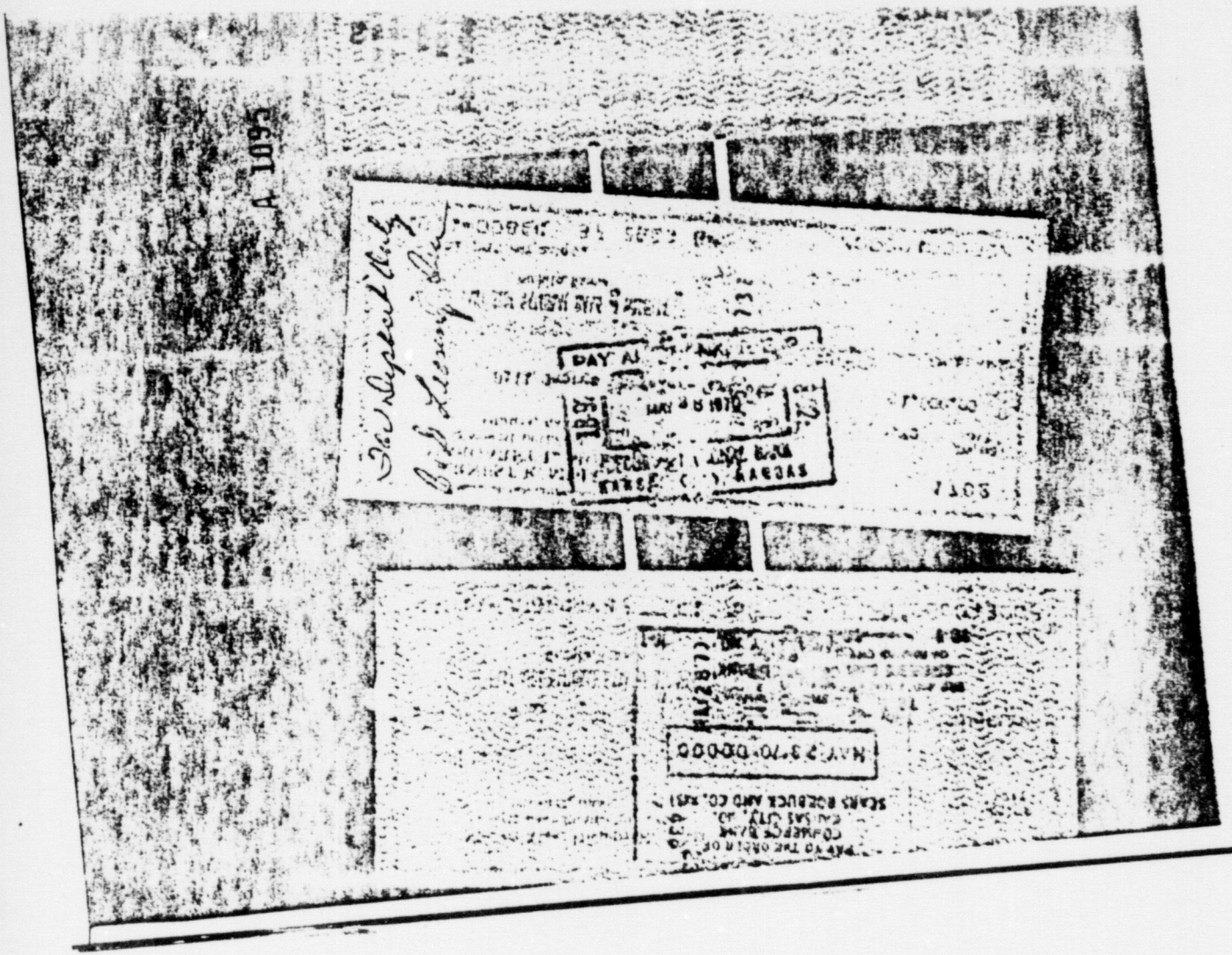
May 2 19 70 40-98/1011

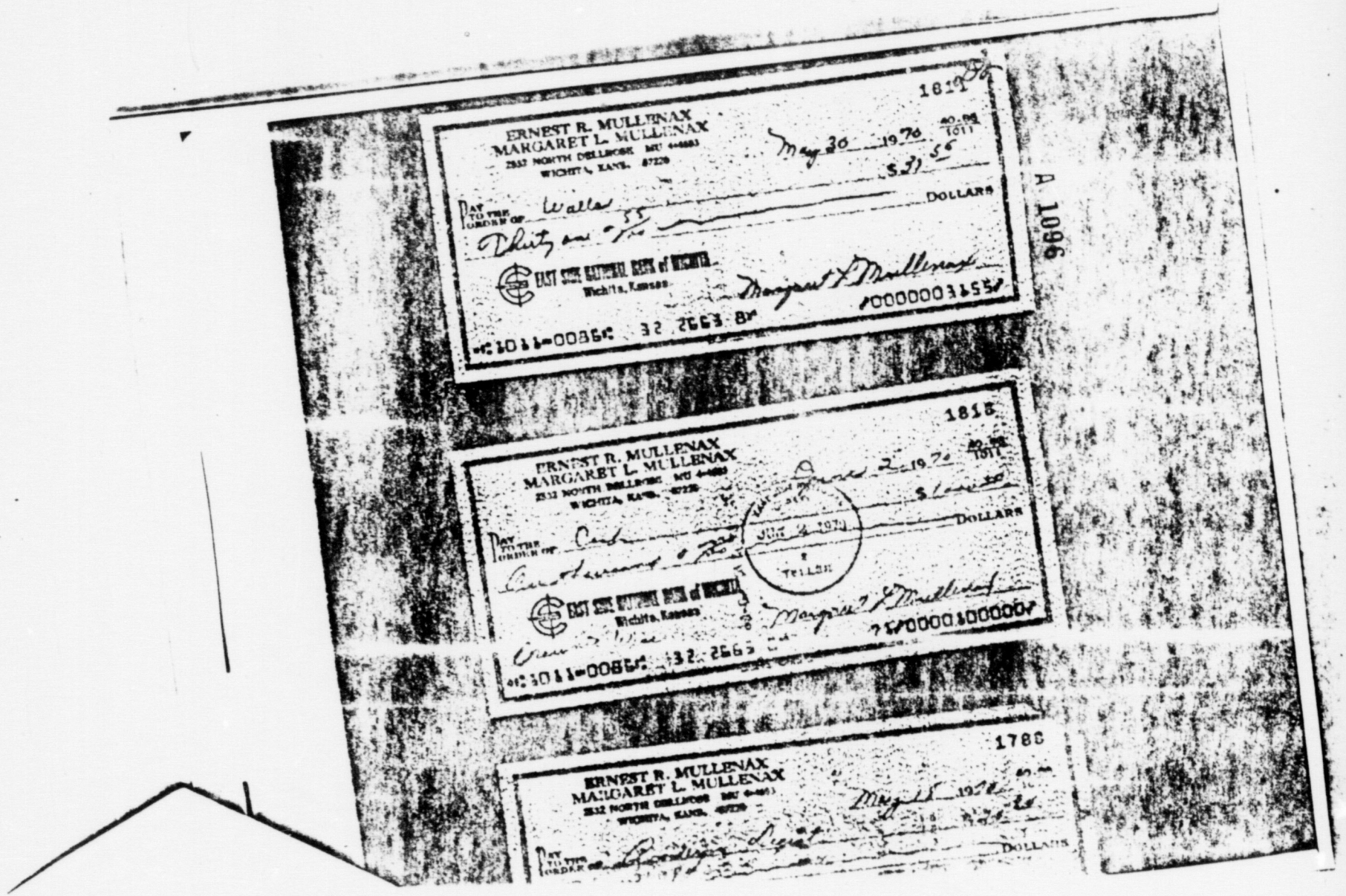
Pay to the order of Pure Valley Mfg. Co. $ 75.00

Seventy-five & 00/100 Dollars

For Lawn Mower

1094




ERNEST R. MULLENAX
MARGARET L. MULLENAX
1812
May 30 19 76
$31.55
DOLLARS
Margaret L. Mullenax
1815
June 2 19 76
$100.00
DOLLARS
JUN 4 1976
TELLER
Margaret L. Mullenax
1780
DOLLARS
1096

1097

A 1098

USA 336-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

295 Id.

SOUTHWEST NATIONAL BANK OF FORT WORTH
FORT WORTH, TEXAS

Checks and other items are received for deposit subject to the terms and conditions of this bank's collection agreement.

ACCOUNT NUMBER 184366

FOR DEPOSIT TO THE ACCOUNT OF

W. C. Chapel

5 18 1970

	DOLLARS	CENTS
CURRENCY		
COIN		
CHECKS		
Wire transfer from		
East Side Nat'l		
Bank, Wichita Falls		
	3000	00
LESS CASH		
TOTAL	3000	00

4-000-020-014

"184366" "000030000000"

A 1099

SA 375 - 475
D 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
296 Id.

[redacted]

ast Side National Bank and Trust Co.

NUMBER OF DEPOSITS	AMOUNT OF DEPOSITS	NUMBER OF CHECKS	AMOUNT OF CHECKS	CHECK CHARGE	CURRENT BALANCE
	22,350.00	62	15,932.31		12,562.30

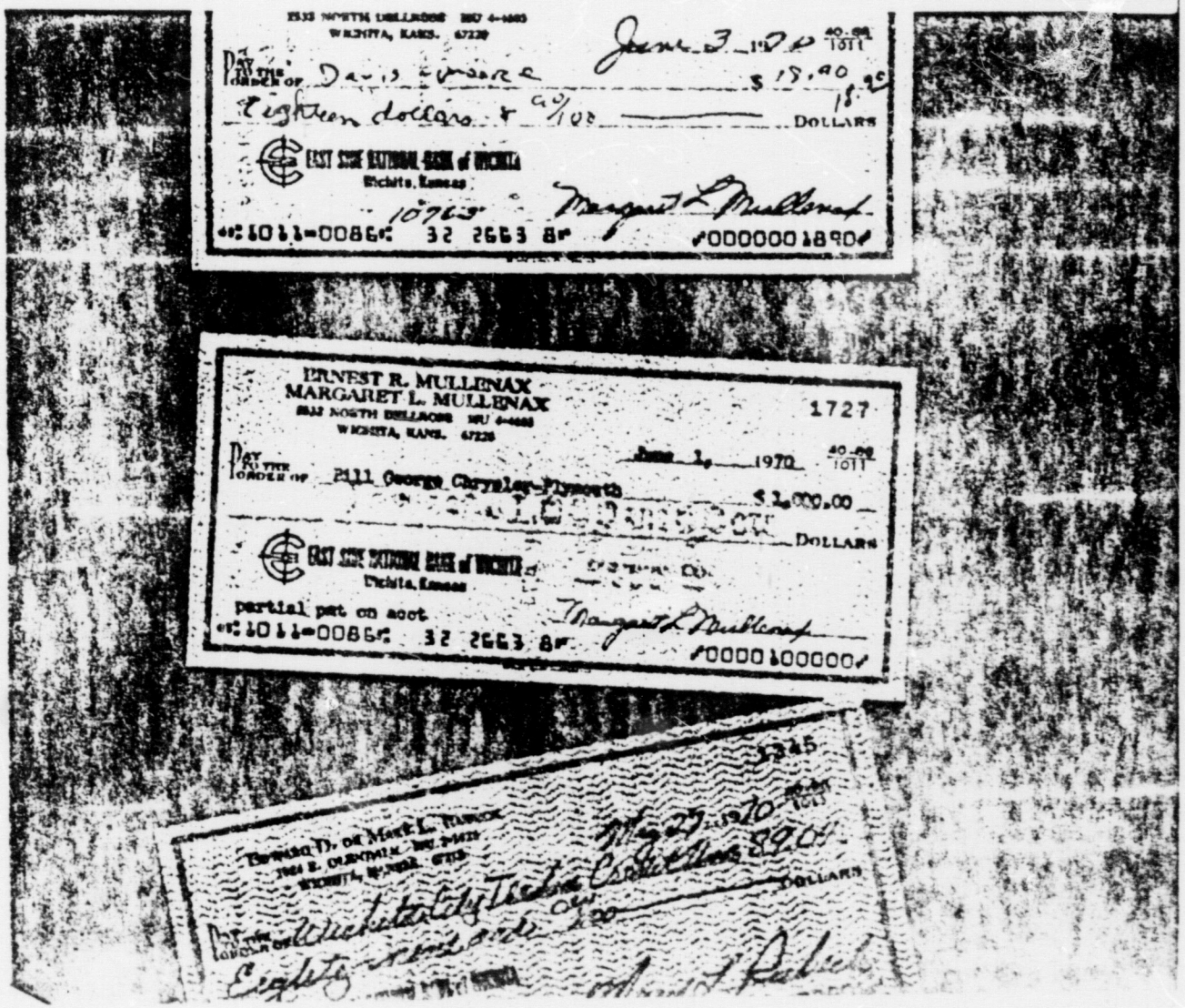
MULLENAX, ERNEST R. OR MARGARET L
2532 NORTH DELROSE
WICHITA, KANSAS 67220

32-2563-9 ACCOUNT NUMBER

01/06/70 STATEMENT DATE

THIS IS A STATEMENT OF YOUR ACCOUNT

DATE	CHECKS AND OTHER ITEMS			DEPOSITS	BALANCE
			BALANCE FORWARD →		5,245.21
/04					5,143.91
/05	7.50	75.00	19.90		5,143.91
	1,000.00				5,111.36
/08	32.45				4,909.55
/09	30.31	155.00	16.50		4,902.55
/10	7.00				4,364.51
/11	1.00SC	537.04			4,311.54
/15	2.00SC	30.00*	20.97		4,309.54
	7.00				4,085.82
/16	200.00	10.00	13.72		4,058.82
/17	27.00				4,041.80
/18	4.71	12.31			4,012.67
/23	100.00	100.00	79.13	250.00	3,897.67
	100.00	19.00			3,873.84
/24	23.83				3,850.13
/25	43.71				3,800.13
/29	30.00				3,764.13
/30	16.00				3,754.13
/01	30.00				15,824.13
/02	30.00	1,000.00	9,000.00	22,100.00	15,481.50
/03	8.00	34.62	299.31		13,677.09
/04	28.00	142.50	1,636.01		12,662.90
	1,000.00	14.79			12,662.90
	.00SC				



2533 NORTH HILLCREST BLD 4-4665
WICHITA, KANS. 67219

June 3 1970 40-58 1011

PAY TO THE ORDER OF Davis Enware $ 18.90

Eighteen dollars & 90/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

10763 Margaret L Mullenax

⑆1011-0086⑆ 32 2663 8⑈ ⑈0000018900⑈

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2533 NORTH HILLCREST BLD 4-4665
WICHITA, KANS. 67219

1727

June 1, 1970 40-58 1011

PAY TO THE ORDER OF Bill George Chrysler-Plymouth $ 2,000.00

DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

partial pmt on acct

Margaret L Mullenax

⑆1011-0086⑆ 32 2663 8⑈ ⑈0000200000⑈

1345

Edward D. & Mary L. Patrick
1944 S. Glenhill Blvd. 68123
Wichita, Kansas 67218

May 27 1970 40-58 1011

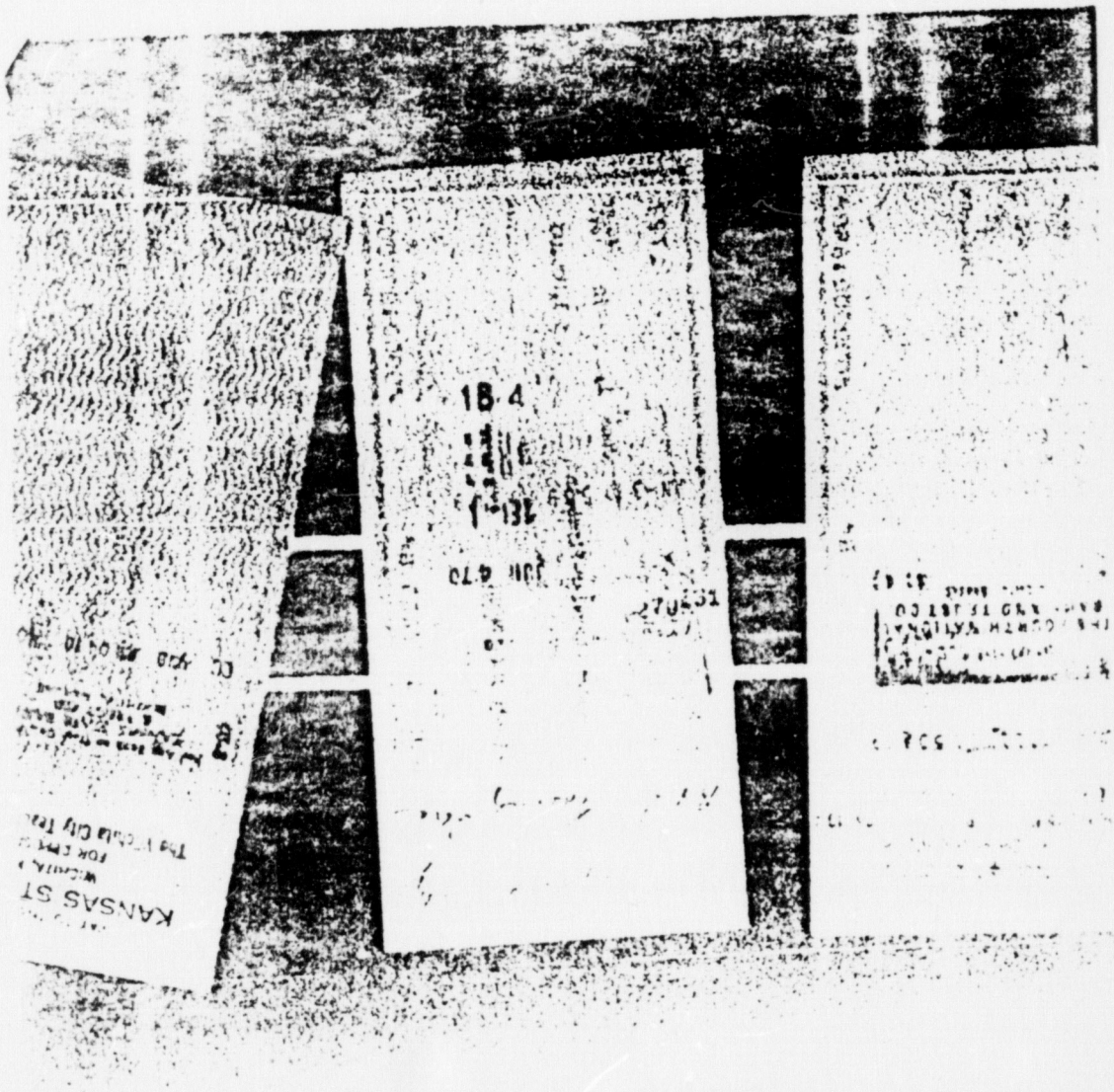
PAY TO THE ORDER OF Wichita City Utilities $ 89.00

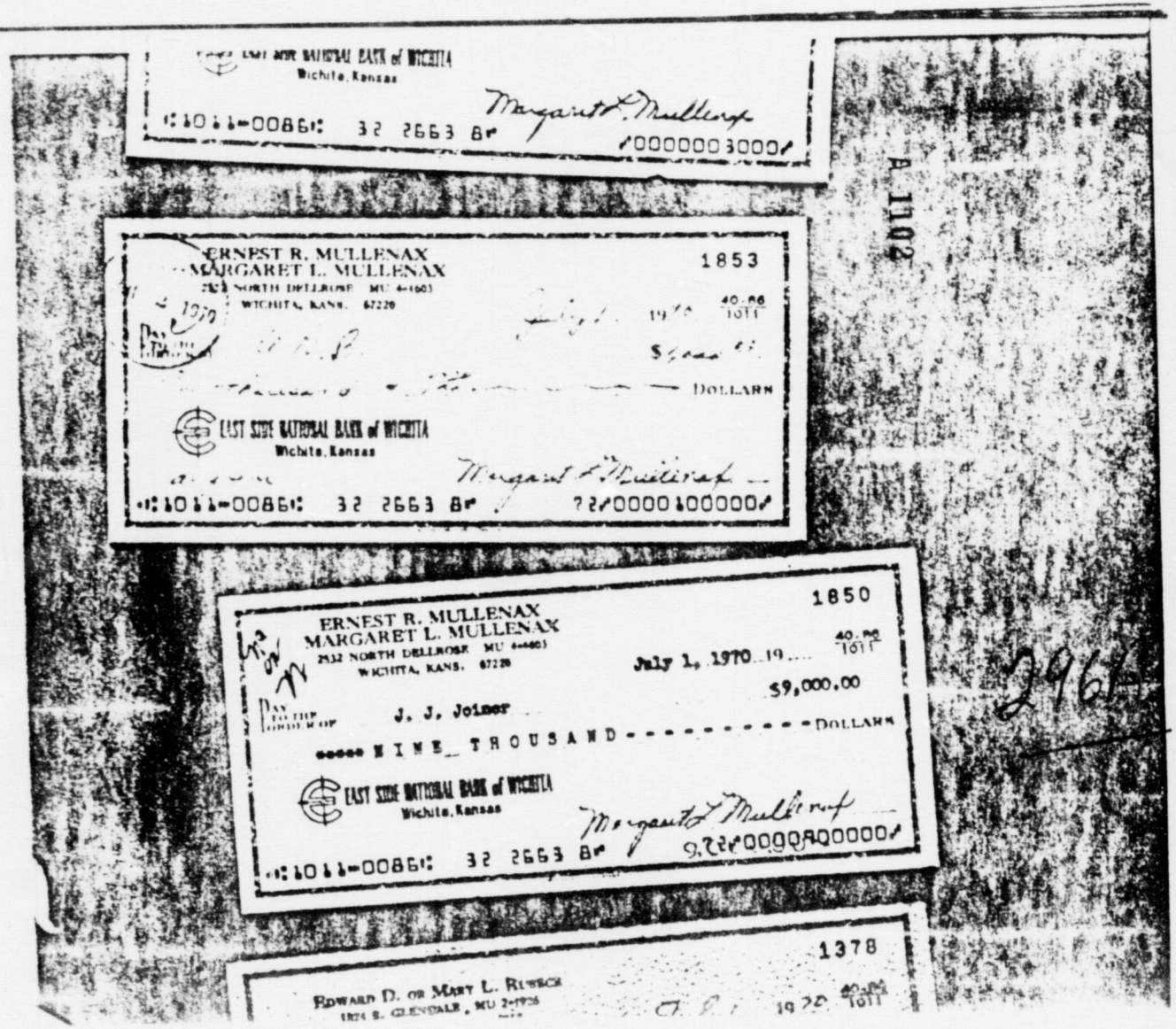
Eighty-nine and 00/100 DOLLARS

Mary L Patrick

A 1100

A 1101





EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

:1011-0086: 32 2663 8# 0000003000

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

1853

40-86
1011

DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

:1011-0086: 32 2663 8# 22000010000

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

1850

40-86
1011

July 1, 1970 19

$9,000.00

PAY TO THE ORDER OF J. J. Joiner

NINE THOUSAND DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

:1011-0086: 32 2663 8# 2200009000000

2961

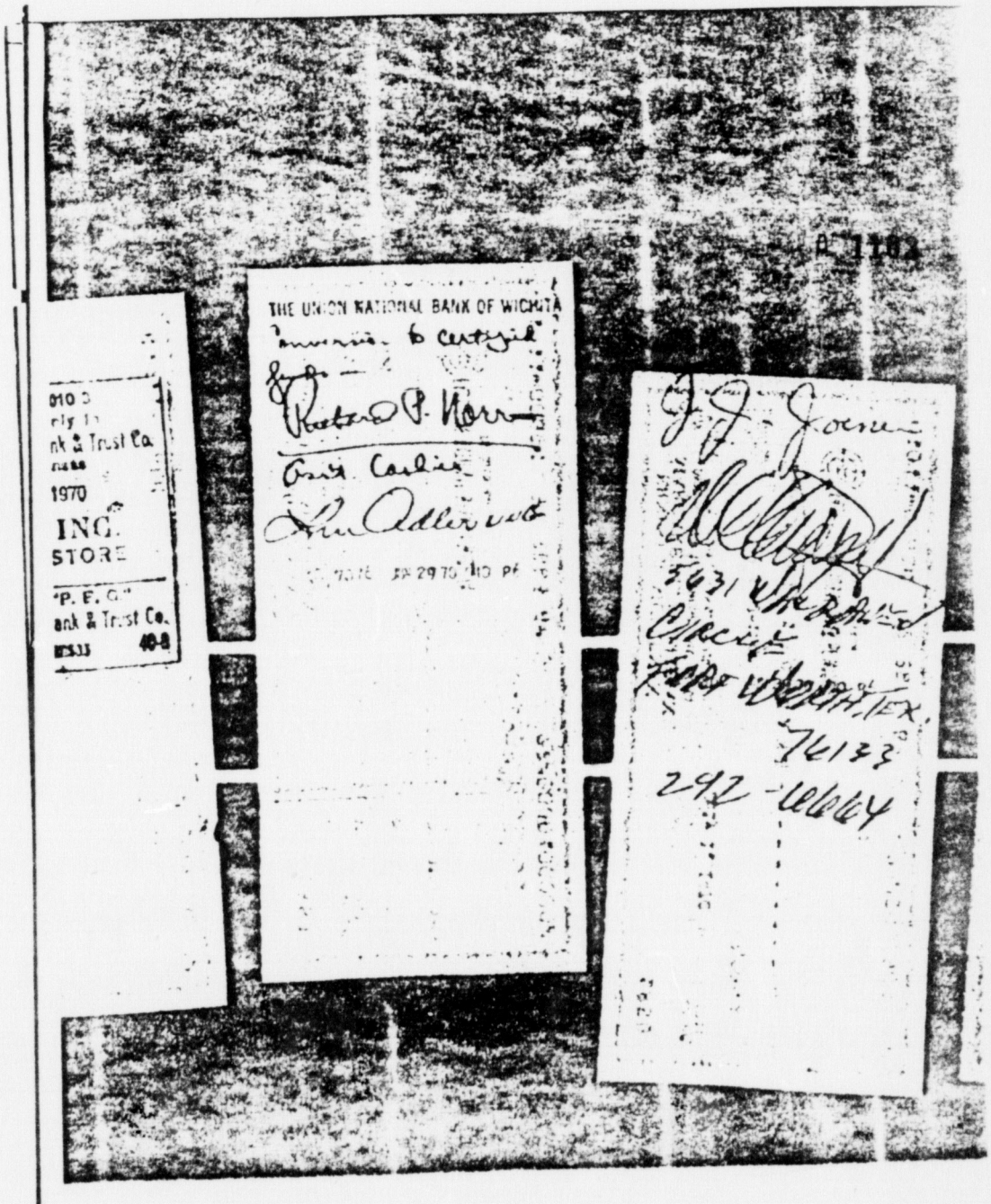
EDWARD D. OR MARY L. RUSSCK
1824 S. GLENDALE, MU 2-1926

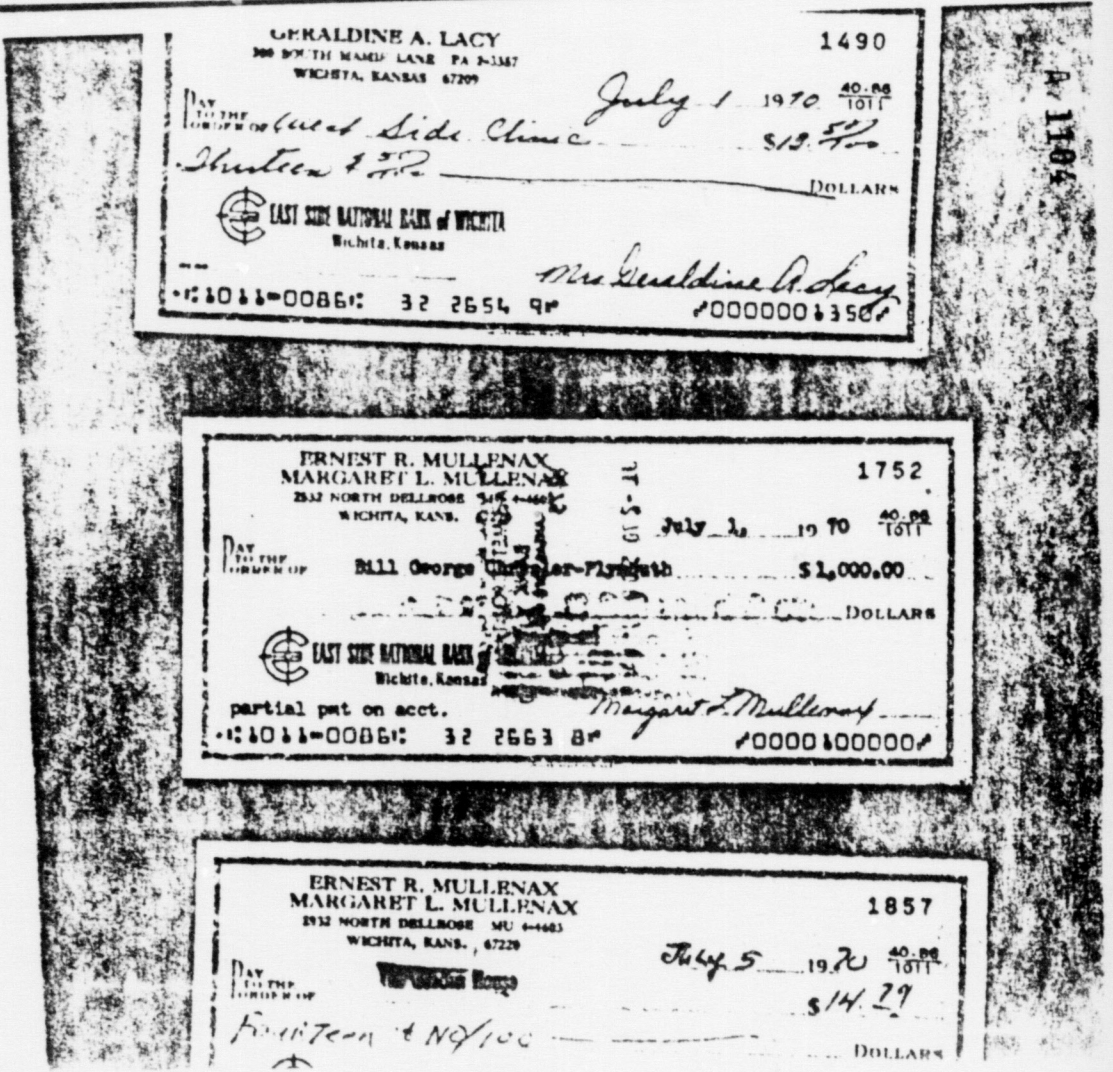
1378

19 20

40-86
1011

A 1102


THE UNION NATIONAL BANK OF WICHITA
ank & Trust Co.
1970
ING.
STORE
"P. E. C."
ank & Trust Co.



GERALDINE A. LACY
300 SOUTH MAIDE LANE PA 4-3387
WICHITA, KANSAS 67209

1490

July 1 1970 40-86/1011

Pay to the order of Lucas Side Clinic $19.50

Nineteen & 50/100 DOLLARS

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Mrs Geraldine A Lacy

⑆1011-0086⑆ 32 2654 9⑈ ⑈0000001950⑈

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

1752

July 1, 1970 40-86/1011

Pay to the order of Bill George Chrysler-Plymouth $1,000.00

DOLLARS

EAST SIDE NATIONAL BANK
Wichita, Kansas

partial pmt on acct.

Margaret L. Mullenax

⑆1011-0086⑆ 32 2663 8⑈ ⑈0000100000⑈

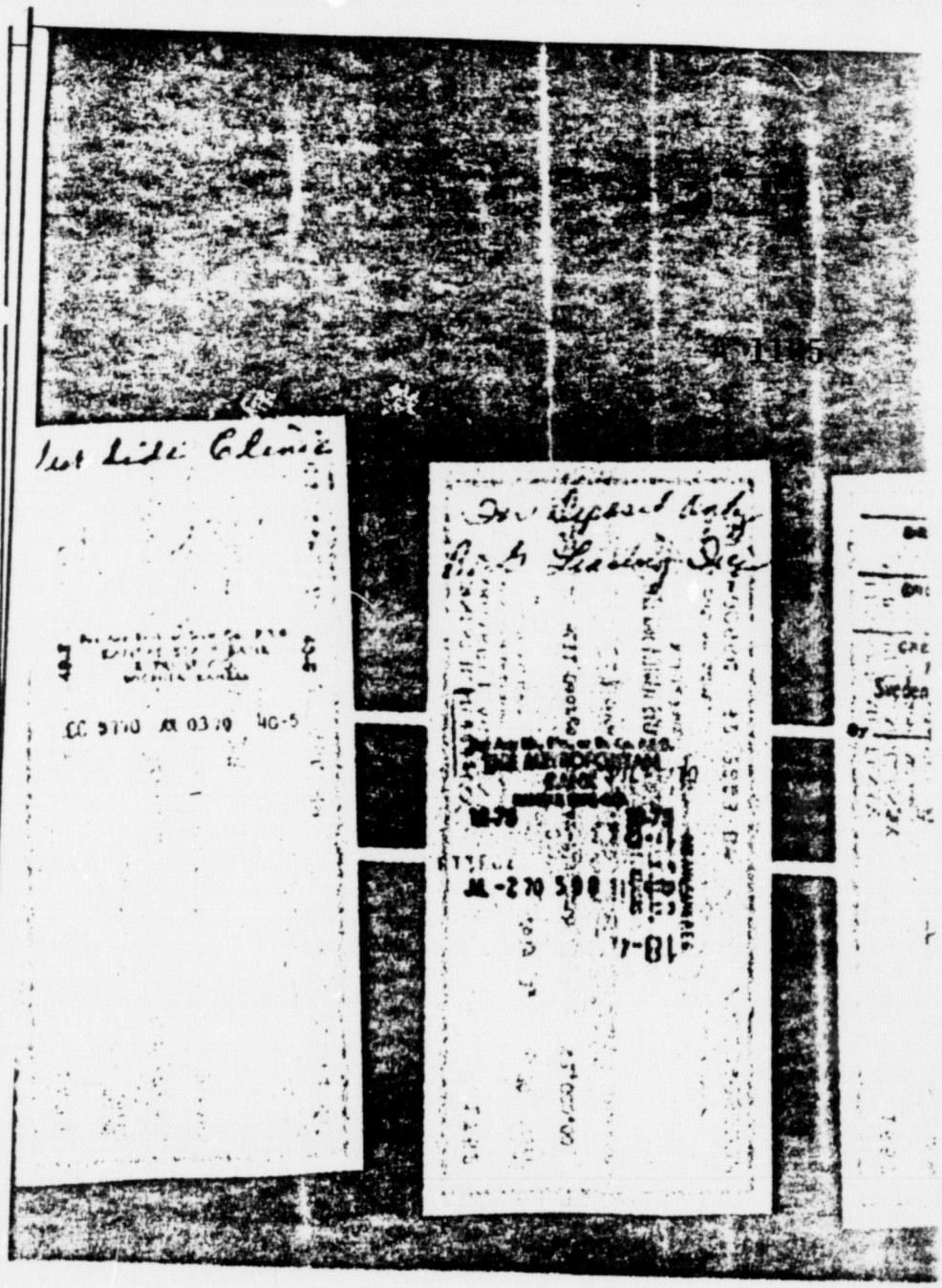
ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

1857

July 5 1970 40-86/1011

Pay to the order of [illegible] $14.79

Fourteen & 79/100 DOLLARS



1846

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

40-58
1011

June 30 1970

$ 28 00

Circle Club of Wichita

DOLLARS

County Lights

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

⑈000000 2800⑈

⑆1011-0086⑆ 32 2663 8⑈

1856

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

40-58
1011

July 3 1970

$ 163 40

Chisholm State Bank

DOLLARS

Co. share of balance of duty fund

EAST SIDE NATIONAL BANK of WICHITA
Wichita, Kansas

Margaret L. Mullenax

⑈000016340⑈

⑆1011-0086⑆ 32 2663 8⑈

1848

ERNEST R. MULLENAX
MARGARET L. MULLENAX
2532 NORTH DELLROSE MU 4-4603
WICHITA, KANS. 67220

42-58
1011

July 1970

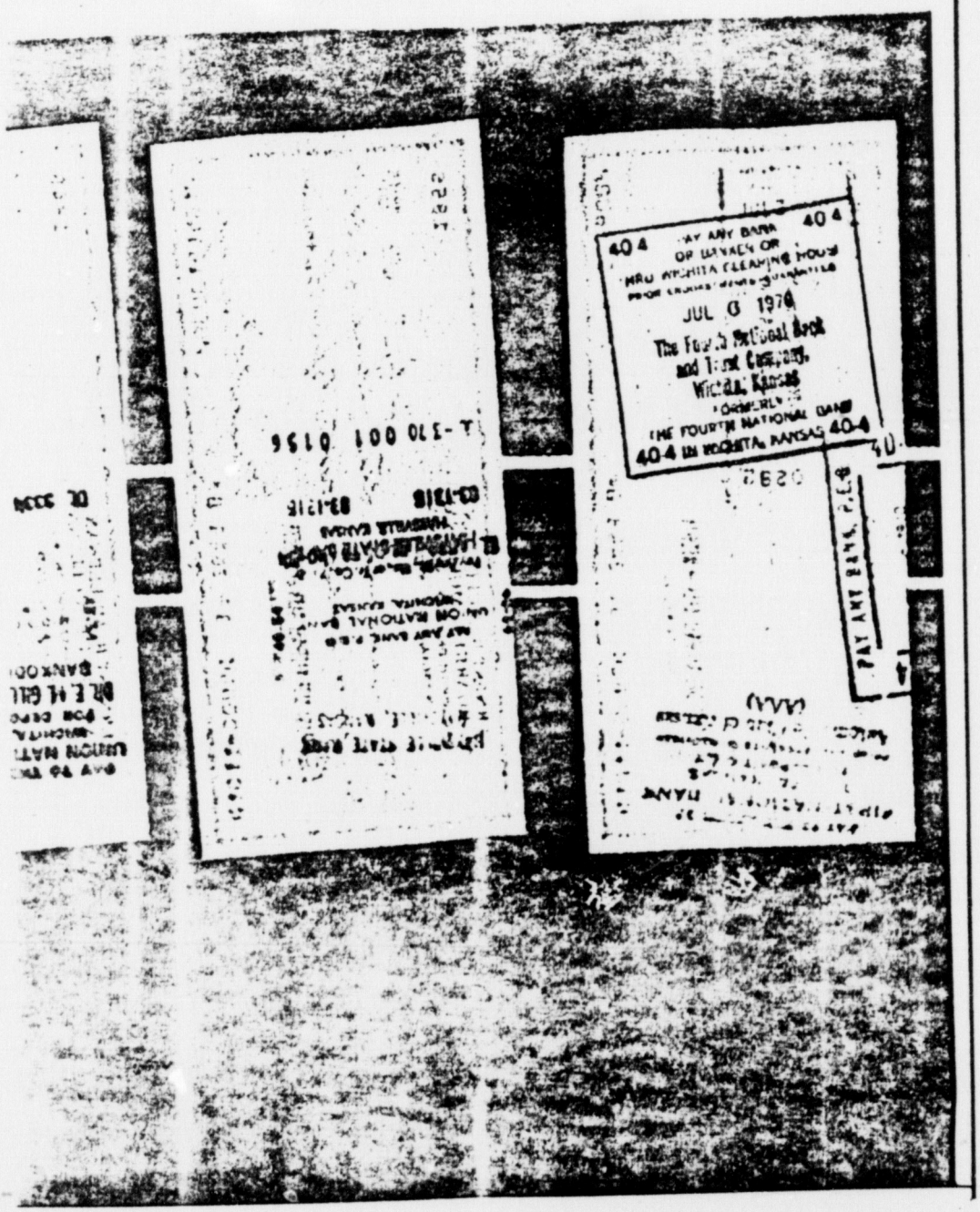
$ 142 00

Co. C.P. Eliminator

DOLLARS

Entry Fee

A 1107

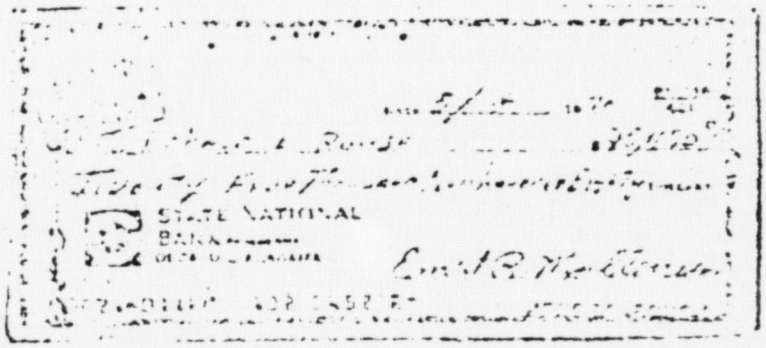


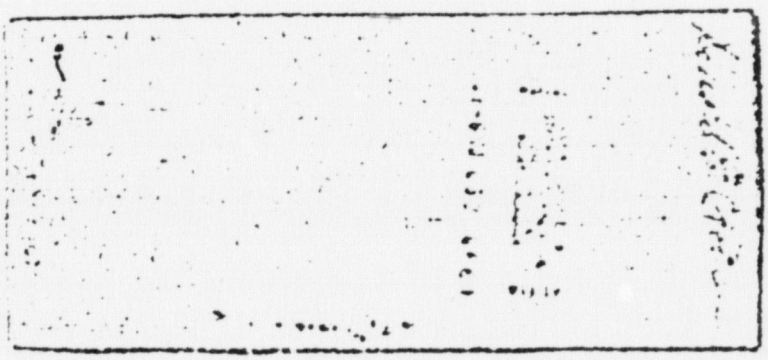
USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

305 Id.

A 1108





USA 33s-475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

309 Id.

A 1109

BANK'S PERMANENT RECORD

REMITTED
CREDITED
RETURNED

PLEASE REPORT BY OUR WOC 1595

DATE May 12, 1970

DOCUMENT
1 check

ENDORSER'S DATE OR NUMBER	DRAWN BY	PAYER	DUE	AMOUNT
	M. L. Mullenax	Ernest Mullenax	Demand	25,000.00
			INT. OR DISC.	
			TOTAL	
			LESS EXCHANGE	
			NET PROCEEDS	

SPECIAL INSTRUCTIONS:
Pay & Remit PLEASE WIRE FATE.

PAID
MAY 18 1970
MAIL TO
East Side National Bank
Wichita, Kansas

RECEIVED FROM:
M. L. Mullenax
2532 N. Bellrose
Credit Acct. #32-2603-8

State National Bank
Decatur, Alabama
Collection Dept.

RETURNS

EAST SIDE NATIONAL BANK
6225 E. KELLOGG
WICHITA, KANSAS 67218

WE ENCLOSE REMITTANCE FOR PROCEEDS FROM THE FOLLOWING:
WE HAVE CREDITED YOUR ACCOUNT FOR THE FOLLOWING:
WE RETURN THE FOLLOWING FOR REASONS ENDORSED THEREON:

PLEASE REPORT BY OUR WOC 1595

DATE May 12, 1970

DOCUMENT
1 check

ENDORSER'S DATE OR NUMBER	DRAWN BY	PAYER	DUE	AMOUNT
	M. L. Mullenax	Ernest Mullenax	Demand	25,000.00
			INT. OR DISC.	
			TOTAL	
			LESS EXCHANGE	
			NET PROCEEDS	

SPECIAL INSTRUCTIONS:
Pay & Remit PLEASE WIRE FATE.

MAIL TO:
M. L. Mullenax
2532 N. Bellrose
Credit Acct. #32-2603-8

State National Bank
Decatur, Alabama
Collection Dept.

A 1110

COLLECTION DEPARTMENT

STATE NATIONAL BANK
OF ALABAMA
Decatur, Ala. 35601

NUMBER 13879
DATE 5-14-70

YOUR NUMBER	YOUR DATE	PAYER	PROTEST	DUE	AMOUNT
OC1595	5-12-70	Ernest Mullenax			
DISPOSITION	DESCRIPTION				
Remit	M. L. Mullenax ck		No	S1	25,000.00

MAIL TO:
East Side National Bank
Collection Department
6225 E. Kellogg
Wichita, Kansas 67218

REASON FOR NON-PAYMENT OF RETURNED ITEMS ENDORSED ON ITEM.

PLUS INTEREST

LESS EXPENSE

PROCEEDS

REMITTED MAY 14 1970

RETURNED NATIONAL BANK
STATE
DECATUR, ALABAMA

CREDITED

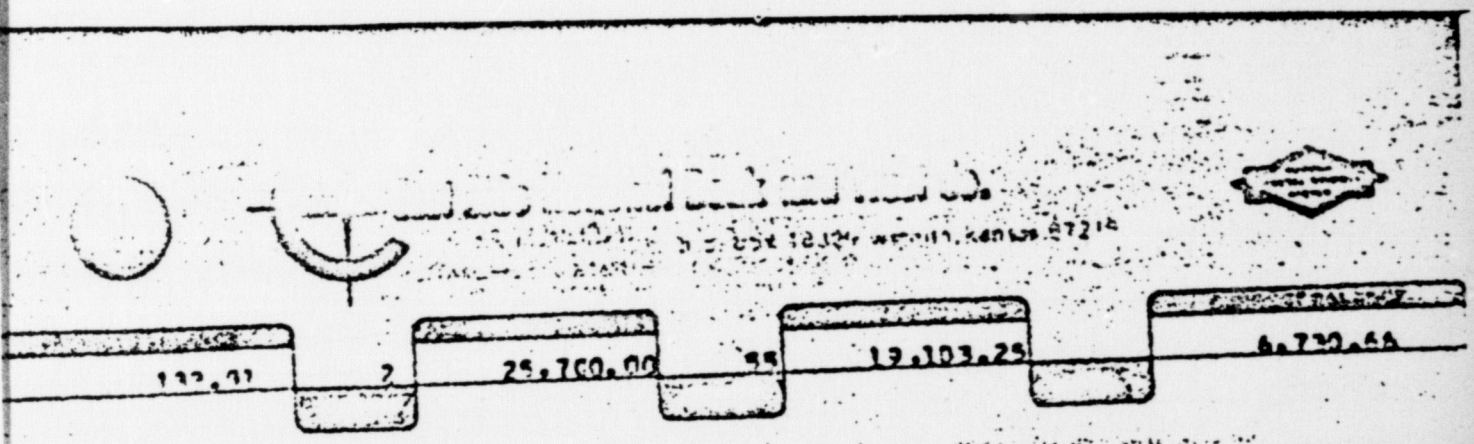
SPECIAL INSTRUCTIONS:

1173

Telegram

1157A CDT MAY 14 70 KD011 NS0050
NS DUC31 FD COLLECT DECATUR ALA 14 1153A CDT
EASTSIDE NATIONAL BANK
WICHITA KANS 6625 E. Kellogg
COLLECTION DEPT
YOUR # CC 1595 FOR $25,000 FOOD TODAY. WILL REMIT

DUPLICATE OF TELEPHONED TELEGRAM



133.91	2	25,760.00	99	13,103.25	6,739.66

MULLENAX, ERNEST R. OR MARGAR
2822 NORTH DELLRUSE
WICHITA, KANSAS 67220

THIS IS A STATEMENT OF YOUR ACCOUNT

				BALANCE FORWARD →	133.91
5/06					115.41
5/07	18.50				119.41
5/08	5.00				70.41
5/11	40.00				15.01
5/13	15.000	25.000	15.40		4.79
5/15	4.500	3.72			23,969.22
5/18	1,493.070	3.50	30.00	25,000.00	17,660.35
	15.00	1,892.87	4,000.00		15,134.03
5/19	475.97	2,000.00	30.01		14,339.42
	677.22	30.19	192.00		14,309.62
	30.03				13,822.61
	9.00	100.00	379.01		13,492.61
5/20	330.00				10,648.41
	1,799.00	29.00	69.20		10,619.91
5/21	24.07	1.83			10,474.59
	400.00	235.00	10.32	700.00	10,446.59
5/22	30.11				10,294.95
	38.38	9.00	45.85		9,254.01
5/25	19.00	1,000.00	12.85		9,213.16
	11.66	21.30	19.00		9,065.15
	10.11	190.00			4,833.40
5/26	9.38	168.00	4.50		7,833.40
5/29	1,011.10				7,798.05
5/32	30.33	15.36			6,745.95
5/31	11.66	1,000.30	20.96		6,739.96
6/02	15.03				6,739.66
6/03	9.95				

OPEN SATURDAYS 'TIL NOON

A 1112

USA 33s - 475
(ED. 4-23-71)

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

386

OCT 9 - 1975

USA 33s - 475
(ED. 4-23-71)

MULLENAX
DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

A 1113

OCT 7 - 1975

38,000.00	JUL 12 68
	JUL 12 68
	JUL 12 68
16,000.00	JUL 12 68
47,000.00	JUL 12 68
41,000.00	APR 10 68
31,000.00	FEB 10 68
41,000.00	SEP 14 68
41,000.00	SEP 14 68
41,000.00	SEP 13 68
41,000.00	NOV 13 68
30,600.00	DEC 3 68
38,150.00	DEC 23 68
28,150.00	DEC 23 68
38,150.00	DEC 28 68
38,150.00	DEC 30 68
37,700.00	JAN 8 69
46,200.00	JAN 28 69
18,500.00	JAN 28 69
47,271.10	FEB 25 69
47,108.81	MAR 25 69
46,036.82	APR 7 69
46,036.82	MAY 1 69
46,613.51	MAY 31 69
46,350.96	JUL 15 69
46,350.96	JUL 26 69
46,145.44	AUG 26 69
46,135.87	OCT 1 69
45,135.87	OCT 3 69
44,948.42	DEC 2 69
44,948.42	JAN 29 70
	JAN 29 70
	JAN 29 70
44,948.42	MAY 9 70
43,548.42	SEP 3 70
43,196.42	SEP 11 70
	SEP 11 70
40,524.23	NOV 2 70
40,374.23	JAN 21 71
	JAN 21 71
	JAN 21 71
	JAN 21 71
	JAN 21 71
	JAN 21 71
40,374.23	DEC 2 71

LIABILITY LEDGER

x Ernest R

[illegible]

NOTE NUMBER	RATE	DESCRIPTION	TIME	INTEREST PAID TO	AMOUNT OF INTEREST	DEBIT	CREDIT	BALANCE
13999.07		ROBERT E YODER	30 DA			22,000.00		22,000.00
14104.07			30 DA			10,000.00		32,000.00
14154.07		BY ROBERT YODER				6,000.00		38,000.00
13999.00					226.73		22,000.00	16,000.00
14154.00					31.50			
14140.04					68.10			
14315.06			180 DA			31,000.00		47,000.00
14154.00					62.22		6,000.00	41,000.00
14104.00							10,000.00	31,000.00
14504.07			30 DA			10,000.00		41,000.00
14504.00							10,000.00	31,000.00
14695.09			90 DA			10,000.00		41,000.00
14504.00					58.34			41,000.00
14315.00							2,400.00	38,600.00
14315.00							450.00	38,150.00
14695.00							10,000.00	28,150.00
15350.08		ASSIGN OF STOCKS	180 DA			10,000.00		38,150.00
14695.00				12 16 68	220.00			38,150.00
14315.00							450.00	37,700.00
14454.08			90 DA			8,500.00		46,200.00
14315.00					1,071.10		27,700.00	18,500.00
15573.08		SECURITIES AS LISTED ON NOTE 15350	180 DA			28,771.10		47,271.10
15573.00					287.71		162.29	47,108.81
15573.00					178.01		271.99	46,836.82
15454.00					170.00			46,613.51
15573.00					226.69		223.31	46,350.96
15573.00					187.45		262.55	46,350.96
15573.00					180.00			46,169.44
15573.00					177.98		205.52	46,139.87
15350.00					200.43		9.57	45,139.87
15573.00							1,000.00	44,948.42
15573.00					262.55		187.45	44,948.42
15573.00					180.00			44,948.42
15350.00					842.05			
15454.00					991.74			
15573.00					709.46			44,948.42
15350.00		SALE OF 171 SHARES AMERICAN INVEST	LIFE				1,000.00	43,948.42
15350.00		SALE OF 200 SHARES MODERN AMERICAN	LIFE				750.00	43,198.42
15573.00							1,160.74	
15454.00		TRANSFER TO R B D					1,513.45	40,524.23
15573.00		TRANSFER TO R B D					150.00	40,374.23
15350.00		TRANSFER TO R B D					7,500.00	
15454.00							26,548.42	
15573.00						7,500.00	6,325.81	.00
15350.00						26,548.42		
15573.00		RECOVERY OF SALE				6,325.81		40,374.23
							7,500.74	32,793.49

GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
102 Id.

DEFENDANT'S
EXHIBIT
U. S. Dist. Cou
S. D. of N. Y.

OCT 7 - 197

Telegram

404P CST APR 23 70 KB365 NSA342

DUPLICATE OF TELEPHONED TELEGRAM

NS HSF142 LH PDF HOUSTM TEX 23 337P CST
DOCTOR ERNEST MULLENAX, (TF 316 6844603)
2532 NORTH DELL ROSE WICHITA KANS
BELIEVE WE CAN FUND CONTINENTAL GENERAL COMMITMENT IN ABOUT
A WEEK AND A HALF
RICHARD F BURCH AND CO

READS CAN FUND PER CY
(352).

A 1114

GF-1201 (R5-69)

DEFENDANT'S
MULLENAX
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

OCT 7 - 1975

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EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

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OCT 7 - 1975

A 1116

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Feb. 2, 1976 @ 3:30 PM

John D. Gold ~~III~~
AUSA SDNY

THE ALPERT PRESS INC. 644 PACIFIC ST. BKLYN., N. Y.